

## SENATE BILL No. 486

By Committee on Business and Labor

1-28

---

9 AN ACT concerning the employment security law; pertaining to certain  
10 payments required; amending K.S.A. 2009 Supp. 44-717 and repealing  
11 the existing section.  
12

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

14 Section 1. K.S.A. 2009 Supp. 44-717 is hereby amended to read as  
15 follows: 44-717. (a) (1) *Penalties on past-due reports, interest on past-due*  
16 *contributions, payments in lieu of contributions and benefit cost pay-*  
17 *ments. Subject to the provisions of paragraph (3), any employer or any*  
18 *officer or agent of an employer, who fails to file any wage report or con-*  
19 *tribution return by the last day of the month following the close of each*  
20 *calendar quarter to which they are related shall pay a penalty as provided*  
21 *by this subsection (a) for each month or fraction of a month until the*  
22 *report or return is received by the secretary of labor. The penalty for each*  
23 *month or fraction of a month shall be an amount equal to .05% of the*  
24 *total wages paid by the employer during the quarter, except that no pen-*  
25 *alty shall be less than \$25 nor more than \$200 for each such report or*  
26 *return not timely filed. Contributions and benefit cost payments unpaid*  
27 *by the last day of the month following the last calendar quarter to which*  
28 *they are related and payments in lieu of contributions unpaid 30 days*  
29 *after the mailing of the statement of benefit charges, shall bear interest*  
30 *at the rate of 1% per month or fraction of a month until payment is*  
31 *received by the secretary of labor except that an employing unit, which*  
32 *is not theretofore subject to this law and which becomes an employer and*  
33 *does not refuse to make the reports, returns and contributions, payments*  
34 *in lieu of contributions and benefit cost payments required under this*  
35 *law, shall not be liable for such penalty or interest if the wage reports and*  
36 *contribution returns required are filed and the contributions, payments*  
37 *in lieu of contributions or benefit cost payments required are paid within*  
38 *10 days following notification by the secretary of labor that a determi-*  
39 *nation has been made fixing its status as an employer subject to this law.*  
40 *Upon written request and good cause shown, the secretary of labor may*  
41 *abate any penalty or interest or portion thereof provided for by this sub-*  
42 *section (a). Interest amounting to less than \$5 shall be waived by the*  
43 *secretary of labor and shall not be collected. Penalties and interest col-*

1 lected pursuant to this subsection shall be paid into the special employ-  
2 ment security fund. For all purposes under this section, amounts assessed  
3 as surcharges under subsection (j) or under K.S.A. 44-710a, and amend-  
4 ments thereto, shall be considered to be contributions and shall be subject  
5 to penalties and interest imposed under this section and to collection in  
6 the manner provided by this section. For purposes of this subsection, a  
7 wage report, a contribution return, a contribution, a payment in lieu of  
8 contribution or a benefit cost payment is deemed to be filed or paid as  
9 of the date it is placed in the United States mail.

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

13 (i) will cause the Indian tribe to be liable for taxes under FUTA;

14 (ii) will cause the Indian tribe to lose the option to make payments  
15 in lieu of contributions;

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

21 (3) *Notwithstanding any provision of subsection (a) to the contrary,*  
22 *for each of the quarters ending on March 31, 2010, June 30, 2010, Sep-*  
23 *tember 30, 2010, December 31, 2010 and March 31, 2011, any penalty*  
24 *or interest assessed pursuant to subsection (a) may, at the election of the*  
25 *employer or any officer or agent of an employer, elect to pay such interest*  
26 *or penalty in accordance with this paragraph.*

27 (A) *The employer or any officer or agent of an employer who is re-*  
28 *sponsible for filing any wage report or contribution return may pay 50%*  
29 *of the amount of the principal amount due upon such wage report or*  
30 *contribution return and defer the payment of the remaining 50% of the*  
31 *amount due and any interest and penalty thereon for one additional cal-*  
32 *endar quarter. During such deferral period, no additional interest or pen-*  
33 *alty shall accrue. Any deferred portion of the principal amount due for*  
34 *any calendar quarter listed in paragraph (3) of this subsection and any*  
35 *deferred interest and penalty attributable thereto shall be paid in full on*  
36 *or before the last day of the month following the close of the fourth cal-*  
37 *endar quarter following the calendar quarter in which the deferral first*  
38 *occurred.*

39 (B) *No employer or any officer or agent of an employer who is re-*  
40 *sponsible for filing any wage report or contribution return under this act*  
41 *may exercise the option provided in subparagraph (A) to defer any pay-*  
42 *ments required under subsection (a) on or after the last day of the month*  
43 *following the close of the calendar quarter ending on March 31, 2011.*

1       (C) *The provisions of this paragraph shall expire on April 30, 2011.*  
2       (b) *Collection.* (1) If, after due notice *and taking into consideration*  
3 *of the provisions of paragraph (3) of subsection (a)*, any employer defaults  
4 in payment of any penalty, contributions, payments in lieu of contribu-  
5 tions, benefit cost payments, or interest thereon the amount due may be  
6 collected by civil action in the name of the secretary of labor and the  
7 employer adjudged in default shall pay the cost of such action. Civil ac-  
8 tions brought under this section to collect contributions, payments in lieu  
9 of contributions, benefit cost payments, penalties, or interest thereon  
10 from an employer shall be heard by the district court at the earliest pos-  
11 sible date and shall be entitled to preference upon the calendar of the  
12 court over all other civil actions except petitions for judicial review under  
13 this act and cases arising under the workmen's compensation act. All  
14 liability determinations of contributions due, payments in lieu of contri-  
15 butions or benefit cost payments due shall be made within a period of  
16 five years from the date such contributions, payments in lieu of contri-  
17 butions or benefit cost payments were due except such determinations  
18 may be made for any time when an employer has filed fraudulent reports  
19 with intent to evade liability.  
20       (2) Any employing unit which is not a resident of this state and which  
21 exercises the privilege of having one or more individuals perform service  
22 for it within this state and any resident employing unit which exercises  
23 that privilege and thereafter removes from this state, shall be deemed  
24 thereby to appoint the secretary of state as its agent and attorney for the  
25 acceptance of process in any civil action under this subsection. In insti-  
26 tuting such an action against any such employing unit the secretary of  
27 labor shall cause such process or notice to be filed with the secretary of  
28 state and such service shall be sufficient service upon such employing  
29 unit and shall be of the same force and validity as if served upon it per-  
30 sonally within this state. The secretary of labor shall send notice imme-  
31 diately of the service of such process or notice, together with a copy  
32 thereof, by registered or certified mail, return receipt requested, to such  
33 employing unit at its last-known address and such return receipt, the  
34 affidavit of compliance of the secretary of labor with the provisions of this  
35 section, and a copy of the notice of service, shall be appended to the  
36 original of the process filed in the court in which such civil action is  
37 pending.  
38       (3) The district courts of this state shall entertain, in the manner  
39 provided in subsections (b)(1) and (b)(2), actions to collect contributions,  
40 payments in lieu of contributions, benefit cost payments and other  
41 amounts owed including interest thereon for which liability has accrued  
42 under the employment security law of any other state or of the federal  
43 government.

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

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

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

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

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

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

1 authorized representative may levy upon property or rights to property, the  
2 secretary or the secretary's authorized representative may seize and sell  
3 such property or rights to property.

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

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

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

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

1 ployer with the person having charge thereof or by delivering a copy to  
2 any other agent authorized by appointment or required by law to receive  
3 service of process, if the agent is one authorized by law to receive service  
4 and, if the law so requires, by also mailing a copy to the employer.

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

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

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

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

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

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

43 (C) The clerk shall enter, on the day the warrant is filed, the case on

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

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

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

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

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

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

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

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

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

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

1 amount of contributions, payments in lieu of contributions or benefit cost  
2 payments and any penalties, and interest computed as due and owing.  
3 With respect to such persons and such amounts assessed, the secretary  
4 shall have available all of the collection remedies authorized or provided  
5 by this section.

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

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

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

20 (3) *subject to the provisions of paragraph (3) of subsection (a),* wage  
21 reports, contribution returns and payments due after June 30, 2010, for  
22 those third party administrators with 50 or more client employees at the  
23 time such filing or payment is first due.

24 The requirements of this subsection may be waived by the secretary  
25 for an employer if the employer demonstrates a hardship in complying  
26 with this subsection.

27 Sec. 2. K.S.A. 2009 Supp. 44-717 is hereby repealed.

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