

SENATE BILL No. 545

By Committee on Ways and Means

2-11

9 AN ACT concerning employment security law; relating to benefits and
10 employer contributions; amending K.S.A. 2009 Supp. 44-703, 44-705
11 and 44-706 and repealing the existing sections; also repealing K.S.A.
12 2009 Supp. 44-704c.
13

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

15 Section 1. K.S.A. 2009 Supp. 44-703 is hereby amended to read as
16 follows: 44-703. As used in this act, unless the context clearly requires
17 otherwise:

18 (a) (1) "Annual payroll" means the total amount of wages paid or
19 payable by an employer during the calendar year.

20 (2) "Average annual payroll" means the average of the annual payrolls
21 of any employer for the last three calendar years immediately preceding
22 the computation date as hereinafter defined if the employer has been
23 continuously subject to contributions during those three calendar years
24 and has paid some wages for employment during each of such years. In
25 determining contribution rates for the calendar year, if an employer has
26 not been continuously subject to contribution for the three calendar years
27 immediately preceding the computation date but has paid wages subject
28 to contributions during only the two calendar years immediately preced-
29 ing the computation date, such employer's "average annual payroll" shall
30 be the average of the payrolls for those two calendar years.

31 (3) "Total wages" means the total amount of wages paid or payable
32 by an employer during the calendar year, including that part of remun-
33 eration in excess of the limitation prescribed as provided in subsection
34 (o)(1) of this section.

35 (b) "Base period" means the first four of the last five completed cal-
36 endar quarters immediately preceding the first day of an individual's ben-
37 efit year, except that the base period in respect to combined wage claims
38 means the base period as defined in the law of the paying state.

39 (1) (A) If an individual lacks sufficient base period wages in order to
40 establish a benefit year in the matter set forth above and satisfies the
41 requirements of subsection (g) of K.S.A. 44-705 and subsection (hh) of
42 K.S.A. 44-703, and amendments thereto, the claimant shall have an al-
43 ternative base period substituted for the current base period so as not to

1 prevent establishment of a valid claim. For the purposes of this subsection,
2 “alternative base period” means the last four completed quarters
3 immediately preceding the date the qualifying injury occurred. In the
4 event the wages in the alternative base period have been used on a prior
5 claim, then they shall be excluded from the new alternative base period.

6 (B) If an individual lacks sufficient base period wages in order to
7 establish a benefit year in the manner set forth above the claimant shall
8 have an alternative base period substituted for the current base period.
9 For the purposes of this subsection, “alternative base period” means eligibility
10 shall be determined using a base period that consists of the four
11 most recently completed calendar quarters preceding the start of the
12 benefit year.

13 (2) For the purposes of this chapter, the term “base period” includes
14 the alternative base period.

15 (c) (1) “Benefits” means the money payments payable to an individual,
16 as provided in this act, with respect to such individual’s
17 unemployment.

18 (2) “Regular benefits” means benefits payable to an individual under
19 this act or under any other state law, including benefits payable to federal
20 civilian employees and to ex-servicemen pursuant to 5 U.S.C. chapter 85,
21 other than extended benefits.

22 (d) “Benefit year” with respect to any individual, means the period
23 beginning with the first day of the first week for which such individual
24 files a valid claim for benefits, and such benefit year shall continue for
25 one full year. In the case of a combined wage claim, the benefit year shall
26 be the benefit year of the paying state. Following the termination of a
27 benefit year, a subsequent benefit year shall commence on the first day
28 of the first week with respect to which an individual next files a claim for
29 benefits. When such filing occurs with respect to a week which overlaps
30 the preceding benefit year, the subsequent benefit year shall commence
31 on the first day immediately following the expiration date of the preceding
32 benefit year. Any claim for benefits made in accordance with subsection
33 (a) of K.S.A. 44-709, and amendments thereto, shall be deemed to be a
34 “valid claim” for the purposes of this subsection if the individual has been
35 paid wages for insured work as required under subsection (e) of K.S.A.
36 44-705 and amendments thereto. Whenever a week of unemployment
37 overlaps two benefit years, such week shall, for the purpose of granting
38 waiting-period credit or benefit payment with respect thereto, be deemed
39 to be a week of unemployment within that benefit year in which the
40 greater part of such week occurs.

41 (e) “Commissioner” or “secretary” means the secretary of labor.

42 (f) (1) “Contributions” means the money payments to the state
43 employment security fund which are required to be made by employers on

1 account of employment under K.S.A. 44-710, and amendments thereto,
2 and voluntary payments made by employers pursuant to such statute.

3 (2) "Payments in lieu of contributions" means the money payments
4 to the state employment security fund from employers which are required
5 to make or which elect to make such payments under subsection (e) of
6 K.S.A. 44-710 and amendments thereto.

7 (g) "Employing unit" means any individual or type of organization,
8 including any partnership, association, limited liability company, agency
9 or department of the state of Kansas and political subdivisions thereof,
10 trust, estate, joint-stock company, insurance company or corporation,
11 whether domestic or foreign including nonprofit corporations, or the re-
12 ceiver, trustee in bankruptcy, trustee or successor thereof, or the legal
13 representatives of a deceased person, which has in its employ one or more
14 individuals performing services for it within this state. All individuals per-
15 forming services within this state for any employing unit which maintains
16 two or more separate establishments within this state shall be deemed to
17 be employed by a single employing unit for all the purposes of this act.
18 Each individual employed to perform or to assist in performing the work
19 of any agent or employee of an employing unit shall be deemed to be
20 employed by such employing unit for all the purposes of this act, whether
21 such individual was hired or paid directly by such employing unit or by
22 such agent or employee, provided the employing unit had actual or con-
23 structive knowledge of the employment.

24 (h) "Employer" means:

25 (1) (A) Any employing unit for which agricultural labor as defined in
26 subsection (w) of this section is performed and which during any calendar
27 quarter in either the current or preceding calendar year paid remunera-
28 tion in cash of \$20,000 or more to individuals employed in agricultural
29 labor or for some portion of a day in each of 20 different calendar weeks,
30 whether or not such weeks were consecutive, in either the current or the
31 preceding calendar year, employed in agricultural labor 10 or more in-
32 dividuals, regardless of whether they were employed at the same moment
33 of time.

34 (B) For the purpose of this subsection (h)(1), any individual who is a
35 member of a crew furnished by a crew leader to perform service in ag-
36 ricultural labor for any other person shall be treated as an employee of
37 such crew leader if:

38 (i) Such crew leader holds a valid certificate of registration under the
39 federal migrant and seasonal agricultural workers protection act or sub-
40 stantially all the members of such crew operate or maintain tractors,
41 mechanized harvesting or cropdusting equipment or any other mecha-
42 nized equipment, which is provided by such crew leader; and

43 (ii) such individual is not in the employment of such other person

- 1 within the meaning of subsection (i) of this section.
- 2 (C) For the purpose of this subsection (h)(1), in the case of any in-
3 dividual who is furnished by a crew leader to perform service in agricul-
4 tural labor for any other person and who is not treated as an employee
5 of such crew leader:
- 6 (i) Such other person and not the crew leader shall be treated as the
7 employer of such individual; and
- 8 (ii) such other person shall be treated as having paid cash remunera-
9 tion to such individual in an amount equal to the amount of cash re-
10 munerated paid to such individual by the crew leader, either on the crew
11 leader's own behalf or on behalf of such other person, for the service in
12 agricultural labor performed for such other person.
- 13 (D) For the purposes of this subsection (h)(1) "crew leader" means
14 an individual who:
- 15 (i) Furnishes individuals to perform service in agricultural labor for
16 any other person;
- 17 (ii) pays, either on such individual's own behalf or on behalf of such
18 other person, the individuals so furnished by such individual for the serv-
19 ice in agricultural labor performed by them; and
- 20 (iii) has not entered into a written agreement with such other person
21 under which such individual is designated as an employee of such other
22 person.
- 23 (2) (A) Any employing unit which for calendar year 2007 and each
24 calendar year thereafter: (i) In any calendar quarter in either the current
25 or preceding calendar year paid for service in employment wages of
26 \$1,500 or more, (ii) for some portion of a day in each of 20 different
27 calendar weeks, whether or not such weeks were consecutive, in either
28 the current or preceding calendar year, had in employment at least one
29 individual, whether or not the same individual was in employment in each
30 such day, or (iii) elects to have an unemployment tax account established
31 at the time of initial registration in accordance with subsection (c) of
32 K.S.A. 44-711, and amendments thereto.
- 33 (B) Employment of individuals to perform domestic service or agri-
34 cultural labor and wages paid for such service or labor shall not be con-
35 sidered in determining whether an employing unit meets the criteria of
36 this subsection (h)(2).
- 37 (3) Any employing unit for which service is employment as defined
38 in subsection (i)(3)(E) of this section.
- 39 (4) (A) Any employing unit, whether or not it is an employing unit
40 under subsection (g) of this section, which acquires or in any manner
41 succeeds to (i) substantially all of the employing enterprises, organization,
42 trade or business, or (ii) substantially all the assets, of another employing
43 unit which at the time of such acquisition was an employer subject to this

1 act;

2 (B) any employing unit which is controlled substantially, either di-
3 rectly or indirectly by legally enforceable means or otherwise, by the same
4 interest or interests, whether or not such interest or interests are an em-
5 ploying unit under subsection (g) of this section, which acquires or in any
6 manner succeeds to a portion of an employer's annual payroll, which is
7 less than 100% of such employer's annual payroll, and which intends to
8 continue the acquired portion as a going business.

9 (5) Any employing unit which paid cash remuneration of \$1,000 or
10 more in any calendar quarter in the current or preceding calendar year
11 to individuals employed in domestic service as defined in subsection (aa)
12 of this section.

13 (6) Any employing unit which having become an employer under this
14 subsection (h) has not, under subsection (b) of K.S.A. 44-711, and amend-
15 ments thereto, ceased to be an employer subject to this act.

16 (7) Any employing unit which has elected to become fully subject to
17 this act in accordance with subsection (c) of K.S.A. 44-711 and amend-
18 ments thereto.

19 (8) Any employing unit not an employer by reason of any other par-
20 agraph of this subsection (h), for which within either the current or pre-
21 ceding calendar year services in employment are or were performed with
22 respect to which such employing unit is liable for any federal tax against
23 which credit may be taken for contributions required to be paid into a
24 state unemployment compensation fund; or which, as a condition for ap-
25 proval of this act for full tax credit against the tax imposed by the federal
26 unemployment tax act, is required, pursuant to such act, to be an "em-
27 ployer" under this act.

28 (9) Any employing unit described in section 501(c)(3) of the federal
29 internal revenue code of 1986 which is exempt from income tax under
30 section 501(a) of the code that had four or more individuals in employ-
31 ment for some portion of a day in each of 20 different weeks, whether or
32 not such weeks were consecutive, within either the current or preceding
33 calendar year, regardless of whether they were employed at the same
34 moment of time.

35 (i) "Employment" means:

36 (1) Subject to the other provisions of this subsection, service, includ-
37 ing service in interstate commerce, performed by

38 (A) Any active officer of a corporation; or

39 (B) any individual who, under the usual common law rules applicable
40 in determining the employer-employee relationship, has the status of an
41 employee; or

42 (C) any individual other than an individual who is an employee under
43 subsection (i)(1)(A) or subsection (i)(1)(B) above who performs services

1 for remuneration for any person:

- 2 (i) As an agent-driver or commission-driver engaged in distributing
3 meat products, vegetable products, fruit products, bakery products, bev-
4 erages (other than milk), or laundry or dry-cleaning services, for such
5 individual's principal; or
6 (ii) as a traveling or city salesman, other than as an agent-driver or
7 commission-driver, engaged upon a full-time basis in the solicitation on
8 behalf of, and the transmission to, a principal (except for side-line sales
9 activities on behalf of some other person) of orders from wholesalers,
10 retailers, contractors, or operators of hotels, restaurants, or other similar
11 establishments for merchandise for resale or supplies for use in their
12 business operations.

13 For purposes of subsection (i)(1)(C), the term "employment" shall in-
14 clude services described in paragraphs (i) and (ii) above only if:

- 15 (a) The contract of service contemplates that substantially all of the
16 services are to be performed personally by such individual;
17 (b) the individual does not have a substantial investment in facilities
18 used in connection with the performance of the services (other than in
19 facilities for transportation); and
20 (c) the services are not in the nature of a single transaction that is not
21 part of a continuing relationship with the person for whom the services
22 are performed.

23 (2) The term "employment" shall include an individual's entire serv-
24 ice within the United States, even though performed entirely outside this
25 state if,

- 26 (A) The service is not localized in any state, and
27 (B) the individual is one of a class of employees who are required to
28 travel outside this state in performance of their duties, and
29 (C) the individual's base of operations is in this state, or if there is no
30 base of operations, then the place from which service is directed or con-
31 trolled is in this state.

32 (3) The term "employment" shall also include:

33 (A) Services performed within this state but not covered by the pro-
34 visions of subsection (i)(1) or subsection (i)(2) shall be deemed to be
35 employment subject to this act if contributions are not required and paid
36 with respect to such services under an unemployment compensation law
37 of any other state or of the federal government.

38 (B) Services performed entirely without this state, with respect to no
39 part of which contributions are required and paid under an unemploy-
40 ment compensation law of any other state or of the federal government,
41 shall be deemed to be employment subject to this act only if the individual
42 performing such services is a resident of this state and the secretary ap-
43 proved the election of the employing unit for whom such services are

1 performed that the entire service of such individual shall be deemed to
2 be employment subject to this act.

3 (C) Services covered by an arrangement pursuant to subsection (l) of
4 K.S.A. 44-714, and amendments thereto, between the secretary and the
5 agency charged with the administration of any other state or federal un-
6 employment compensation law, pursuant to which all services performed
7 by an individual for an employing unit are deemed to be performed en-
8 tirely within this state, shall be deemed to be employment if the secretary
9 has approved an election of the employing unit for whom such services
10 are performed, pursuant to which the entire service of such individual
11 during the period covered by such election is deemed to be insured work.

12 (D) Services performed by an individual for wages or under any con-
13 tract of hire shall be deemed to be employment subject to this act unless
14 and until it is shown to the satisfaction of the secretary that: (i) Such
15 individual has been and will continue to be free from control or direction
16 over the performance of such services, both under the individual's con-
17 tract of hire and in fact; and (ii) such service is either outside the usual
18 course of the business for which such service is performed or that such
19 service is performed outside of all the places of business of the enterprise
20 for which such service is performed.

21 (E) Service performed by an individual in the employ of this state or
22 any instrumentality thereof, any political subdivision of this state or any
23 instrumentality thereof, or in the employ of an Indian tribe, as defined
24 pursuant to section 3306(u) of the federal unemployment tax act, any
25 instrumentality of more than one of the foregoing or any instrumentality
26 which is jointly owned by this state or a political subdivision thereof or
27 Indian tribes and one or more other states or political subdivisions of this
28 or other states, provided that such service is excluded from "employment"
29 as defined in the federal unemployment tax act by reason of section
30 3306(c)(7) of that act and is not excluded from "employment" under
31 subsection (i)(4)(A) of this section. For purposes of this section, the ex-
32 clusions from employment in subsections (i)(4)(A) and (i)(4)(L) shall also
33 be applicable to services performed in the employ of an Indian tribe.

34 (F) Service performed by an individual in the employ of a religious,
35 charitable, educational or other organization which is excluded from the
36 term "employment" as defined in the federal unemployment tax act solely
37 by reason of section 3306(c)(8) of that act, and is not excluded from
38 employment under paragraphs (I) through (M) of subsection (i)(4).

39 (G) The term "employment" shall include the service of an individual
40 who is a citizen of the United States, performed outside the United States
41 except in Canada, in the employ of an American employer (other than
42 service which is deemed "employment" under the provisions of subsec-
43 tion (i)(2) or subsection (i)(3) or the parallel provisions of another state's

1 law), if:

2 (i) The employer's principal place of business in the United States is
3 located in this state; or

4 (ii) the employer has no place of business in the United States, but

5 (A) The employer is an individual who is a resident of this state; or

6 (B) the employer is a corporation which is organized under the laws
7 of this state; or

8 (C) the employer is a partnership or a trust and the number of the
9 partners or trustees who are residents of this state is greater than the
10 number who are residents of any other state; or

11 (iii) none of the criteria of paragraphs (i) and (ii) above of this sub-
12 section (i)(3)(G) are met but the employer has elected coverage in this
13 state or, the employer having failed to elect coverage in any state, the
14 individual has filed a claim for benefits, based on such service, under the
15 law of this state.

16 (H) An "American employer," for purposes of subsection (i)(3)(G),
17 means a person who is:

18 (i) An individual who is a resident of the United States; or

19 (ii) a partnership if $\frac{2}{3}$ or more of the partners are residents of the
20 United States; or

21 (iii) a trust, if all of the trustees are residents of the United States; or

22 (iv) a corporation organized under the laws of the United States or
23 of any state.

24 (I) Notwithstanding subsection (i)(2) of this section, all service per-
25 formed by an officer or member of the crew of an American vessel or
26 American aircraft on or in connection with such vessel or aircraft, if the
27 operating office, from which the operations of such vessel or aircraft op-
28 erating within, or within and without, the United States are ordinarily and
29 regularly supervised, managed, directed and controlled is within this state.

30 (J) Notwithstanding any other provisions of this subsection (i), service
31 with respect to which a tax is required to be paid under any federal law
32 imposing a tax against which credit may be taken for contributions re-
33 quired to be paid into a state unemployment compensation fund or which
34 as a condition for full tax credit against the tax imposed by the federal
35 unemployment tax act is required to be covered under this act.

36 (K) Domestic service in a private home, local college club or local
37 chapter of a college fraternity or sorority performed for a person who
38 paid cash remuneration of \$1,000 or more in any calendar quarter in the
39 current calendar year or the preceding calendar year to individuals em-
40 ployed in such domestic service.

41 (4) The term "employment" shall not include: (A) Service performed
42 in the employ of an employer specified in subsection (h)(3) of this section
43 if such service is performed by an individual in the exercise of duties:

- 1 (i) As an elected official;
- 2 (ii) as a member of a legislative body, or a member of the judiciary,
3 of a state, political subdivision or of an Indian tribe;
- 4 (iii) as a member of the state national guard or air national guard;
- 5 (iv) as an employee serving on a temporary basis in case of fire, storm,
6 snow, earthquake, flood or similar emergency;
- 7 (v) in a position which, under or pursuant to the laws of this state or
8 tribal law, is designated as a major nontenured policymaking or advisory
9 position or as a policymaking or advisory position the performance of the
10 duties of which ordinarily does not require more than eight hours per
11 week;
- 12 (B) service with respect to which unemployment compensation is
13 payable under an unemployment compensation system established by an
14 act of congress;
- 15 (C) service performed by an individual in the employ of such indi-
16 vidual's son, daughter or spouse, and service performed by a child under
17 the age of 21 years in the employ of such individual's father or mother;
- 18 (D) service performed in the employ of the United States govern-
19 ment or an instrumentality of the United States exempt under the con-
20 stitution of the United States from the contributions imposed by this act,
21 except that to the extent that the congress of the United States shall
22 permit states to require any instrumentality of the United States to make
23 payments into an unemployment fund under a state unemployment com-
24 pensation law, all of the provisions of this act shall be applicable to such
25 instrumentalities, and to services performed for such instrumentalities, in
26 the same manner, to the same extent and on the same terms as to all
27 other employers, employing units, individuals and services. If this state
28 shall not be certified for any year by the federal security agency under
29 section 3304(c) of the federal internal revenue code of 1986, the payments
30 required of such instrumentalities with respect to such year shall be re-
31 funded by the secretary from the fund in the same manner and within
32 the same period as is provided in subsection (f) of K.S.A. 44-717, and
33 amendments thereto, with respect to contributions erroneously collected;
- 34 (E) service covered by an arrangement between the secretary and
35 the agency charged with the administration of any other state or federal
36 unemployment compensation law pursuant to which all services per-
37 formed by an individual for an employing unit during the period covered
38 by such employing unit's duly approved election, are deemed to be per-
39 formed entirely within the jurisdiction of such other state or federal
40 agency;
- 41 (F) service performed by an individual under the age of 18 in the
42 delivery or distribution of newspapers or shopping news, not including
43 delivery or distribution to any point for subsequent delivery or

1 distribution;

2 (G) service performed by an individual for an employing unit as an
3 insurance agent or as an insurance solicitor, if all such service performed
4 by such individual for such employing unit is performed for remuneration
5 solely by way of commission;

6 (H) service performed in any calendar quarter in the employ of any
7 organization exempt from income tax under section 501(a) of the federal
8 internal revenue code of 1986 (other than an organization described in
9 section 401(a) or under section 521 of such code) if the remuneration for
10 such service is less than \$50. In construing the application of the term
11 “employment,” if services performed during $\frac{1}{2}$ or more of any pay period
12 by an individual for the person employing such individual constitute em-
13 ployment, all the services of such individual for such period shall be
14 deemed to be employment; but if the services performed during more
15 than $\frac{1}{2}$ of any such pay period by an individual for the person employing
16 such individual do not constitute employment, then none of the services
17 of such individual for such period shall be deemed to be employment. As
18 used in this subsection (i)(4)(H) the term “pay period” means a period
19 (of not more than 31 consecutive days) for which a payment of remuneration
20 is ordinarily made to the individual by the person employing such
21 individual. This subsection (i)(4)(H) shall not be applicable with respect
22 to services with respect to which unemployment compensation is payable
23 under an unemployment compensation system established by an act of
24 congress;

25 (I) services performed in the employ of a church or convention or
26 association of churches, or an organization which is operated primarily
27 for religious purposes and which is operated, supervised, controlled, or
28 principally supported by a church or convention or association of
29 churches;

30 (J) service performed by a duly ordained, commissioned, or licensed
31 minister of a church in the exercise of such individual’s ministry or by a
32 member of a religious order in the exercise of duties required by such
33 order;

34 (K) service performed in a facility conducted for the purpose of carrying out a program of:

35 (i) Rehabilitation for individuals whose earning capacity is impaired
36 by age or physical or mental deficiency or injury, or

37 (ii) providing remunerative work for individuals who because of their
38 impaired physical or mental capacity cannot be readily absorbed in the
39 competitive labor market, by an individual receiving such rehabilitation
40 or remunerative work;

41 (L) service performed as part of an employment work-relief or work-
42 training program assisted or financed in whole or in part by any federal
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- 1 agency or an agency of a state or political subdivision thereof or of an
2 Indian tribe, by an individual receiving such work relief or work training;
- 3 (M) service performed by an inmate of a custodial or correctional
4 institution;
- 5 (N) service performed, in the employ of a school, college, or univer-
6 sity, if such service is performed by a student who is enrolled and is
7 regularly attending classes at such school, college or university;
- 8 (O) service performed by an individual who is enrolled at a nonprofit
9 or public educational institution which normally maintains a regular fac-
10 ulty and curriculum and normally has a regularly organized body of stu-
11 dents in attendance at the place where its educational activities are carried
12 on as a student in a full-time program, taken for credit at such institution,
13 which combines academic instruction with work experience, if such serv-
14 ice is an integral part of such program, and such institution has so certified
15 to the employer, except that this subsection (i)(4)(O) shall not apply to
16 service performed in a program established for or on behalf of an em-
17 ployer or group of employers;
- 18 (P) service performed in the employ of a hospital licensed, certified
19 or approved by the secretary of health and environment, if such service
20 is performed by a patient of the hospital;
- 21 (Q) services performed as a qualified real estate agent. As used in
22 this subsection (i)(4)(Q) the term “qualified real estate agent” means any
23 individual who is licensed by the Kansas real estate commission as a sa-
24 lesperson under the real estate brokers’ and salespersons’ license act and
25 for whom:
- 26 (i) Substantially all of the remuneration, whether or not paid in cash,
27 for the services performed by such individual as a real estate salesperson
28 is directly related to sales or other output, including the performance of
29 services, rather than to the number of hours worked; and
- 30 (ii) the services performed by the individual are performed pursuant
31 to a written contract between such individual and the person for whom
32 the services are performed and such contract provides that the individual
33 will not be treated as an employee with respect to such services for state
34 tax purposes;
- 35 (R) services performed for an employer by an extra in connection
36 with any phase of motion picture or television production or television
37 commercials for less than 14 days during any calendar year. As used in
38 this subsection, the term “extra” means an individual who pantomimes in
39 the background, adds atmosphere to the set and performs such actions
40 without speaking and “employer” shall not include any employer which
41 is a governmental entity or any employer described in section 501(c)(3)
42 of the federal internal revenue code of 1986 which is exempt from income
43 taxation under section 501(a) of the code;

- 1 (S) services performed by an oil and gas contract pumper. As used in
2 this subsection (i)(4)(S), “oil and gas contract pumper” means a person
3 performing pumping and other services on one or more oil or gas leases,
4 or on both oil and gas leases, relating to the operation and maintenance
5 of such oil and gas leases, on a contractual basis for the operators of such
6 oil and gas leases and “services” shall not include services performed for
7 a governmental entity or any organization described in section 501(c)(3)
8 of the federal internal revenue code of 1986 which is exempt from income
9 taxation under section 501(a) of the code;
- 10 (T) service not in the course of the employer’s trade or business per-
11 formed in any calendar quarter by an employee, unless the cash remu-
12 neration paid for such service is \$200 or more and such service is per-
13 formed by an individual who is regularly employed by such employer to
14 perform such service. For purposes of this paragraph, an individual shall
15 be deemed to be regularly employed by an employer during a calendar
16 quarter only if:
- 17 (i) On each of some 24 days during such quarter such individual per-
18 forms for such employer for some portion of the day service not in the
19 course of the employer’s trade or business, or
- 20 (ii) such individual was regularly employed, as determined under sub-
21 paragraph (i), by such employer in the performance of such service during
22 the preceding calendar quarter.
- 23 Such excluded service shall not include any services performed for an
24 employer which is a governmental entity or any employer described in
25 section 501(c)(3) of the federal internal revenue code of 1986 which is
26 exempt from income taxation under section 501(a) of the code;
- 27 (U) service which is performed by any person who is a member of a
28 limited liability company and which is performed as a member or manager
29 of that limited liability company; and
- 30 (V) services performed as a qualified direct seller. The term “direct
31 seller” means any person if:
- 32 (i) Such person:
- 33 (a) is engaged in the trade or business of selling or soliciting the sale
34 of consumer products to any buyer on a buy-sell basis or a deposit-com-
35 mission basis for resale, by the buyer or any other person, in the home
36 or otherwise rather than in a permanent retail establishment; or
- 37 (b) is engaged in the trade or business of selling or soliciting the sale
38 of consumer products in the home or otherwise than in a permanent retail
39 establishment;
- 40 (ii) substantially all the remuneration whether or not paid in cash for
41 the performance of the services described in subparagraph (i) is directly
42 related to sales or other output including the performance of services
43 rather than to the number of hours worked;

- 1 (iii) the services performed by the person are performed pursuant to
2 a written contract between such person and the person for whom the
3 services are performed and such contract provides that the person will
4 not be treated as an employee for federal and state tax purposes;
- 5 (iv) for purposes of this act, a sale or a sale resulting exclusively from
6 a solicitation made by telephone, mail, or other telecommunications
7 method, or other nonpersonal method does not satisfy the requirements
8 of this subsection;
- 9 (W) service performed as an election official or election worker, if
10 the amount of remuneration received by the individual during the cal-
11 endar year for services as an election official or election worker is less
12 than \$1,000;
- 13 (X) service performed by agricultural workers who are aliens admit-
14 ted to the United States to perform labor pursuant to section 1101
15 (a)(15)(H)(ii)(a) of the immigration and nationality act; and
- 16 (Y) service performed by an owner-operator of a motor vehicle that
17 is leased or contracted to a licensed motor carrier with the services of a
18 driver and is not treated under the terms of the lease agreement or con-
19 tract with the licensed motor carrier as an employee for purposes of the
20 federal insurance contribution act, 26 U.S.C. § 3101 et seq., the federal
21 social security act, 42 U.S.C. § 301 et seq., the federal unemployment tax
22 act, 26 U.S.C. § 3301 et seq., and the federal statutes prescribing income
23 tax withholding at the source, 26 U.S.C. § 3401 et seq. Employees or
24 agents of the owner-operator shall not be considered employees of the
25 licensed motor carrier for purposes of employment security taxation or
26 compensation. As used in this subsection (Y), the following definitions
27 apply: (i) “Motor vehicle” means any automobile, truck-trailer, semi-
28 trailer, tractor, motor bus or any other self-propelled or motor-driven
29 vehicle used upon any of the public highways of Kansas for the purpose
30 of transporting persons or property; (ii) “licensed motor carrier” means
31 any person, firm, corporation or other business entity that holds a certifi-
32 cate of convenience and necessity or a certificate of public service from
33 the state corporation commission or is required to register motor carrier
34 equipment pursuant to 49 U.S.C. § 14504; and (iii) “owner-operator”
35 means a person, firm, corporation or other business entity that is the
36 owner of a single motor vehicle that is driven exclusively by the owner
37 under a lease agreement or contract with a licensed motor carrier.
- 38 (j) “Employment office” means any office operated by this state and
39 maintained by the secretary of labor for the purpose of assisting persons
40 to become employed.
- 41 (k) “Fund” means the employment security fund established by this
42 act, to which all contributions and reimbursement payments required and
43 from which all benefits provided under this act shall be paid and including

1 all money received from the federal government as reimbursements pur-
2 suant to section 204 of the federal-state extended compensation act of
3 1970, and amendments thereto.

4 (l) "State" includes, in addition to the states of the United States of
5 America, any dependency of the United States, the Commonwealth of
6 Puerto Rico, the District of Columbia and the Virgin Islands.

7 (m) "Unemployment." An individual shall be deemed "unemployed"
8 with respect to any week during which such individual performs no serv-
9 ices and with respect to which no wages are payable to such individual,
10 or with respect to any week of less than full-time work if the wages payable
11 to such individual with respect to such week are less than such individual's
12 weekly benefit amount.

13 (n) "Employment security administration fund" means the fund es-
14 tablished by this act, from which administrative expenses under this act
15 shall be paid.

16 (o) "Wages" means all compensation for services, including commis-
17 sions, bonuses, back pay and the cash value of all remuneration, including
18 benefits, paid in any medium other than cash. The reasonable cash value
19 of remuneration in any medium other than cash, shall be estimated and
20 determined in accordance with rules and regulations prescribed by the
21 secretary. Compensation payable to an individual which has not been
22 actually received by that individual within 21 days after the end of the
23 pay period in which the compensation was earned shall be considered to
24 have been paid on the 21st day after the end of that pay period. Effective
25 January 1, 1986, gratuities, including tips received from persons other
26 than the employing unit, shall be considered wages when reported in
27 writing to the employer by the employee. Employees must furnish a writ-
28 ten statement to the employer, reporting all tips received if they total \$20
29 or more for a calendar month whether the tips are received directly from
30 a person other than the employer or are paid over to the employee by
31 the employer. This includes amounts designated as tips by a customer
32 who uses a credit card to pay the bill. Notwithstanding the other provi-
33 sions of this subsection (o), wages paid in back pay awards or settlements
34 shall be allocated to the week or weeks and reported in the manner as
35 specified in the award or agreement, or, in the absence of such specificity
36 in the award or agreement, such wages shall be allocated to the week or
37 weeks in which such wages, in the judgment of the secretary, would have
38 been paid. The term "wages" shall not include:

39 (1) That part of the remuneration which has been paid in a calendar
40 year to an individual by an employer or such employer's predecessor in
41 excess of \$3,000 for all calendar years prior to 1972, \$4,200 for the cal-
42 endar years 1972 to 1977, inclusive, \$6,000 for calendar years 1978 to
43 1982, inclusive, \$7,000 for the calendar year 1983, and \$8,000 with re-

1 spect to employment during any calendar year following 1983, except that
2 if the definition of the term “wages” as contained in the federal unem-
3 ployment tax act is amended to include remuneration in excess of \$8,000
4 paid to an individual by an employer under the federal act during any
5 calendar year, wages shall include remuneration paid in a calendar year
6 to an individual by an employer subject to this act or such employer’s
7 predecessor with respect to employment during any calendar year up to
8 an amount equal to the dollar limitation specified in the federal unem-
9 ployment tax act. For the purposes of this subsection (o)(1), the term
10 “employment” shall include service constituting employment under any
11 employment security law of another state or of the federal government;

12 (2) the amount of any payment (including any amount paid by an
13 employing unit for insurance or annuities, or into a fund, to provide for
14 any such payment) made to, or on behalf of, an employee or any of such
15 employee’s dependents under a plan or system established by an em-
16 ployer which makes provisions for employees generally, for a class or
17 classes of employees or for such employees or a class or classes of em-
18 ployees and their dependents, on account of (A) sickness or accident
19 disability, except in the case of any payment made to an employee or such
20 employee’s dependents, this subparagraph shall exclude from the term
21 “wages” only payments which are received under a workers compensation
22 law. Any third party which makes a payment included as wages by reason
23 of this subparagraph (2)(A) shall be treated as the employer with respect
24 to such wages, or (B) medical and hospitalization expenses in connection
25 with sickness or accident disability, or (C) death;

26 (3) any payment on account of sickness or accident disability, or med-
27 ical or hospitalization expenses in connection with sickness or accident
28 disability, made by an employer to, or on behalf of, an employee after the
29 expiration of six calendar months following the last calendar month in
30 which the employee worked for such employer;

31 (4) any payment made to, or on behalf of, an employee or such em-
32 ployee’s beneficiary:

33 (A) From or to a trust described in section 401(a) of the federal in-
34 ternal revenue code of 1986 which is exempt from tax under section
35 501(a) of the federal internal revenue code of 1986 at the time of such
36 payment unless such payment is made to an employee of the trust as
37 remuneration for services rendered as such employee and not as a ben-
38 efiary of the trust;

39 (B) under or to an annuity plan which, at the time of such payment,
40 is a plan described in section 403(a) of the federal internal revenue code
41 of 1986;

42 (C) under a simplified employee pension as defined in section
43 408(k)(1) of the federal internal revenue code of 1986, other than any

- 1 contribution described in section 408(k)(6) of the federal internal revenue
2 code of 1986;
- 3 (D) under or to an annuity contract described in section 403(b) of
4 the federal internal revenue code of 1986, other than a payment for the
5 purchase of such contract which was made by reason of a salary reduction
6 agreement whether evidenced by a written instrument or otherwise;
- 7 (E) under or to an exempt governmental deferred compensation plan
8 as defined in section 3121(v)(3) of the federal internal revenue code of
9 1986;
- 10 (F) to supplement pension benefits under a plan or trust described
11 in any of the foregoing provisions of this subparagraph to take into ac-
12 count some portion or all of the increase in the cost of living, as deter-
13 mined by the secretary of labor, since retirement but only if such sup-
14 plemental payments are under a plan which is treated as a welfare plan
15 under section 3(2)(B)(ii) of the federal employee retirement income se-
16 curity act of 1974; or
- 17 (G) under a cafeteria plan within the meaning of section 125 of the
18 federal internal revenue code of 1986;
- 19 (5) the payment by an employing unit (without deduction from the
20 remuneration of the employee) of the tax imposed upon an employee
21 under section 3101 of the federal internal revenue code of 1986 with
22 respect to remuneration paid to an employee for domestic service in a
23 private home of the employer or for agricultural labor;
- 24 (6) remuneration paid in any medium other than cash to an employee
25 for service not in the course of the employer's trade or business;
- 26 (7) remuneration paid to or on behalf of an employee if and to the
27 extent that at the time of the payment of such remuneration it is reason-
28 able to believe that a corresponding deduction is allowable under section
29 217 of the federal internal revenue code of 1986 relating to moving
30 expenses;
- 31 (8) any payment or series of payments by an employer to an employee
32 or any of such employee's dependents which is paid:
- 33 (A) Upon or after the termination of an employee's employment re-
34 lationship because of (i) death or (ii) retirement for disability; and
- 35 (B) under a plan established by the employer which makes provisions
36 for employees generally, a class or classes of employees or for such em-
37 ployees or a class or classes of employees and their dependents, other
38 than any such payment or series of payments which would have been paid
39 if the employee's employment relationship had not been so terminated;
- 40 (9) remuneration for agricultural labor paid in any medium other than
41 cash;
- 42 (10) any payment made, or benefit furnished, to or for the benefit of
43 an employee if at the time of such payment or such furnishing it is rea-

1 sonable to believe that the employee will be able to exclude such payment
2 or benefit from income under section 129 of the federal internal revenue
3 code of 1986 which relates to dependent care assistance programs;

4 (11) the value of any meals or lodging furnished by or on behalf of
5 the employer if at the time of such furnishing it is reasonable to believe
6 that the employee will be able to exclude such items from income under
7 section 119 of the federal internal revenue code of 1986;

8 (12) any payment made by an employer to a survivor or the estate of
9 a former employee after the calendar year in which such employee died;

10 (13) any benefit provided to or on behalf of an employee if at the
11 time such benefit is provided it is reasonable to believe that the employee
12 will be able to exclude such benefit from income under section 74(c), 117
13 or 132 of the federal internal revenue code of 1986;

14 (14) any payment made, or benefit furnished, to or for the benefit of
15 an employee, if at the time of such payment or such furnishing it is rea-
16 sonable to believe that the employee will be able to exclude such payment
17 or benefit from income under section 127 of the federal internal revenue
18 code of 1986 relating to educational assistance to the employee; or

19 (15) any payment made to or for the benefit of an employee if at the
20 time of such payment it is reasonable to believe that the employee will
21 be able to exclude such payment from income under section 106(d) of
22 the federal internal revenue code of 1986 relating to health savings
23 accounts.

24 Nothing in any paragraph of subsection (o), other than paragraph (1),
25 shall exclude from the term “wages”: (1) Any employer contribution un-
26 der a qualified cash or deferred arrangement, as defined in section 401(k)
27 of the federal internal revenue code of 1986, to the extent that such
28 contribution is not included in gross income by reason of section 402(a)(8)
29 of the federal internal revenue code of 1986; or (2) any amount treated
30 as an employer contribution under section 414(h)(2) of the federal inter-
31 nal revenue code of 1986.

32 Any amount deferred under a nonqualified deferred compensation
33 plan shall be taken into account for purposes of this section as of the later
34 of when the services are performed or when there is no substantial risk
35 of forfeiture of the rights to such amount. Any amount taken into account
36 as wages by reason of this paragraph, and the income attributable thereto,
37 shall not thereafter be treated as wages for purposes of this section. For
38 purposes of this paragraph, the term “nonqualified deferred compensa-
39 tion plan” means any plan or other arrangement for deferral of compen-
40 sation other than a plan described in subsection (o)(4).

41 (p) “Week” means such period or periods of seven consecutive cal-
42 endar days, as the secretary may by rules and regulations prescribe.

43 (q) “Calendar quarter” means the period of three consecutive cal-

1 endar months ending March 31, June 30, September 30 or December
2 31, or the equivalent thereof as the secretary may by rules and regulations
3 prescribe.

4 (r) “Insured work” means employment for employers.

5 (s) “Approved training” means: (1) Any vocational training course or
6 course in basic education skills, ~~including a job training program author-~~
7 ~~ized under the federal workforce investment act of 1998,~~ approved by
8 the secretary or a person or persons designated by the secretary; *and*

9 (2) *on and after January 1, 2011, a job training program authorized*
10 *under the federal workforce investment act of 1998 approved by the sec-*
11 *retary or a person or persons designated by the secretary.*

12 (t) “American vessel” or “American aircraft” means any vessel or air-
13 craft documented or numbered or otherwise registered under the laws
14 of the United States; and any vessel or aircraft which is neither docu-
15 mented or numbered or otherwise registered under the laws of the
16 United States nor documented under the laws of any foreign country, if
17 its crew performs service solely for one or more citizens or residents of
18 the United States or corporations organized under the laws of the United
19 States or of any state.

20 (u) “Institution of higher education,” for the purposes of this section,
21 means an educational institution which:

22 (1) Admits as regular students only individuals having a certificate of
23 graduation from a high school, or the recognized equivalent of such a
24 certificate;

25 (2) is legally authorized in this state to provide a program of education
26 beyond high school;

27 (3) provides an educational program for which it awards a bachelor’s
28 or higher degree, or provides a program which is acceptable for full credit
29 toward such a degree, a program of postgraduate or postdoctoral studies,
30 or a program of training to prepare students for gainful employment in a
31 recognized occupation; and

32 (4) is a public or other nonprofit institution.

33 Notwithstanding any of the foregoing provisions of this subsection (u),
34 all colleges and universities in this state are institutions of higher educa-
35 tion for purposes of this section, except that no college, university, junior
36 college or other postsecondary school or institution which is operated by
37 the federal government or any agency thereof shall be an institution of
38 higher education for purposes of the employment security law.

39 (v) “Educational institution” means any institution of higher educa-
40 tion, as defined in subsection (u) of this section, or any institution, except
41 private for profit institutions, in which participants, trainees or students
42 are offered an organized course of study or training designed to transfer
43 to them knowledge, skills, information, doctrines, attitudes or abilities

1 from, by or under the guidance of an instructor or teacher and which is
2 approved, licensed or issued a permit to operate as a school by the state
3 department of education or other government agency that is authorized
4 within the state to approve, license or issue a permit for the operation of
5 a school or to an Indian tribe in the operation of an educational institution.
6 The courses of study or training which an educational institution offers
7 may be academic, technical, trade or preparation for gainful employment
8 in a recognized occupation.

9 (w) (1) "Agricultural labor" means any remunerated service:

10 (A) On a farm, in the employ of any person, in connection with cul-
11 tivating the soil, or in connection with raising or harvesting any agricul-
12 tural or horticultural commodity, including the raising, shearing, feeding,
13 caring for, training, and management of livestock, bees, poultry, and fur-
14 bearing animals and wildlife.

15 (B) In the employ of the owner or tenant or other operator of a farm,
16 in connection with the operating, management, conservation, improve-
17 ment, or maintenance of such farm and its tools and equipment, or in
18 salvaging timber or clearing land of brush and other debris left by a hur-
19 ricane, if the major part of such service is performed on a farm.

20 (C) In connection with the production or harvesting of any commod-
21 ity defined as an agricultural commodity in section (15)(g) of the agri-
22 cultural marketing act, as amended (46 Stat. 1500, sec. 3; 12 U.S.C. 1141j)
23 or in connection with the ginning of cotton, or in connection with the
24 operation or maintenance of ditches, canals, reservoirs or waterways, not
25 owned or operated for profit, used exclusively for supplying and storing
26 water for farming purposes.

27 (D) (i) In the employ of the operator of a farm in handling, planting,
28 drying, packing, packaging, processing, freezing, grading, storing, or de-
29 livering to storage or to market or to a carrier for transportation to market,
30 in its unmanufactured state, any agricultural or horticultural commodity;
31 but only if such operator produced more than $\frac{1}{2}$ of the commodity with
32 respect to which such service is performed;

33 (ii) in the employ of a group of operators of farms (or a cooperative
34 organization of which such operators are members) in the performance
35 of service described in paragraph (i) above of this subsection (w)(1)(D),
36 but only if such operators produced more than $\frac{1}{2}$ of the commodity with
37 respect to which such service is performed;

38 (iii) the provisions of paragraphs (i) and (ii) above of this subsection
39 (w)(1)(D) shall not be deemed to be applicable with respect to service
40 performed in connection with commercial canning or commercial freez-
41 ing or in connection with any agricultural or horticultural commodity after
42 its delivery to a terminal market for distribution for consumption.

43 (E) On a farm operated for profit if such service is not in the course

1 of the employer's trade or business.

2 (2) "Agricultural labor" does not include service performed prior to
3 January 1, 1980, by an individual who is an alien admitted to the United
4 States to perform service in agricultural labor pursuant to sections 214(c)
5 and 101(a)(15)(H) of the federal immigration and nationality act.

6 (3) As used in this subsection (w), the term "farm" includes stock,
7 dairy, poultry, fruit, fur-bearing animal, and truck farms, plantations,
8 ranches, nurseries, ranges, greenhouses, or other similar structures used
9 primarily for the raising of agricultural or horticultural commodities, and
10 orchards.

11 (4) For the purpose of this section, if an employing unit does not
12 maintain sufficient records to separate agricultural labor from other em-
13 ployment, all services performed during any pay period by an individual
14 for the person employing such individual shall be deemed to be agricul-
15 tural labor if services performed during $\frac{1}{2}$ or more of such pay period
16 constitute agricultural labor; but if the services performed during more
17 than $\frac{1}{2}$ of any such pay period by an individual for the person employing
18 such individual do not constitute agricultural labor, then none of the serv-
19 ices of such individual for such period shall be deemed to be agricultural
20 labor. As used in this subsection (w), the term "pay period" means a
21 period of not more than 31 consecutive days for which a payment of
22 remuneration is ordinarily made to the individual by the person employ-
23 ing such individual.

24 (x) "Reimbursing employer" means any employer who makes pay-
25 ments in lieu of contributions to the employment security fund as pro-
26 vided in subsection (e) of K.S.A. 44-710 and amendments thereto.

27 (y) "Contributing employer" means any employer other than a re-
28 imbursing employer or rated governmental employer.

29 (z) "Wage combining plan" means a uniform national arrangement
30 approved by the United States secretary of labor in consultation with the
31 state unemployment compensation agencies and in which this state shall
32 participate, whereby wages earned in one or more states are transferred
33 to another state, called the "paying state," and combined with wages in
34 the paying state, if any, for the payment of benefits under the laws of the
35 paying state and as provided by an arrangement so approved by the
36 United States secretary of labor.

37 (aa) "Domestic service" means any service for a person in the oper-
38 ation and maintenance of a private household, local college club or local
39 chapter of a college fraternity or sorority, as distinguished from service
40 as an employee in the pursuit of an employer's trade, occupation, pro-
41 fession, enterprise or vocation.

42 (bb) "Rated governmental employer" means any governmental entity
43 which elects to make payments as provided by K.S.A. 44-710d and

1 amendments thereto.

2 (cc) “Benefit cost payments” means payments made to the employ-
3 ment security fund by a governmental entity electing to become a rated
4 governmental employer.

5 (dd) “Successor employer” means any employer, as described in sub-
6 section (h) of this section, which acquires or in any manner succeeds to
7 (1) substantially all of the employing enterprises, organization, trade or
8 business of another employer or (2) substantially all the assets of another
9 employer.

10 (ee) “Predecessor employer” means an employer, as described in
11 subsection (h) of this section, who has previously operated a business or
12 portion of a business with employment to which another employer has
13 succeeded.

14 (ff) “Lessor employing unit” means any independently established
15 business entity which engages in the business of providing leased em-
16 ployees to a client lessee.

17 (gg) “Client lessee” means any individual, organization, partnership,
18 corporation or other legal entity leasing employees from a lessor employ-
19 ing unit.

20 (hh) “Qualifying injury” means a personal injury by accident arising
21 out of and in the course of employment within the coverage of the Kansas
22 workers compensation act, K.S.A. 44-501 et seq., and amendments
23 thereto.

24 Sec. 2. K.S.A. 2009 Supp. 44-705 is hereby amended to read as fol-
25 lows: 44-705. Except as provided by K.S.A. 44-757 and amendments
26 thereto, an unemployed individual shall be eligible to receive benefits
27 with respect to any week only if the secretary, or a person or persons
28 designated by the secretary, finds that:

29 (a) The claimant has registered for work at and thereafter continued
30 to report at an employment office in accordance with rules and regula-
31 tions adopted by the secretary, except that, subject to the provisions of
32 subsection (a) of K.S.A. 44-704 and amendments thereto, the secretary
33 may adopt rules and regulations which waive or alter either or both of
34 the requirements of this subsection (a).

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

37 (c) The claimant is able to perform the duties of such claimant’s cus-
38 tomary occupation or the duties of other occupations for which the claim-
39 ant is reasonably fitted by training or experience, and is available for work,
40 as demonstrated by the claimant’s pursuit of the full course of action most
41 reasonably calculated to result in the claimant’s reemployment except
42 that, notwithstanding any other provisions of this section, an unemployed
43 claimant otherwise eligible for benefits shall not become ineligible for

1 benefits: ~~(1) because of the claimant's enrollment in and satisfactory pur-~~
2 ~~suit of approved training, including training approved under section~~
3 ~~236(a)(1) of the trade act of 1974 or (2) solely because such individual is~~
4 ~~seeking only part-time employment if the individual is available for a~~
5 ~~number of hours per week that are comparable to the individual's part-~~
6 ~~time work experience in the base period.~~

7 For the purposes of this subsection, an inmate of a custodial or cor-
8 rectional institution shall be deemed to be unavailable for work and not
9 eligible to receive unemployment compensation while incarcerated.

10 (d) (1) Except as provided further, the claimant has been unem-
11 ployed for a waiting period of one week or the claimant is unemployed
12 and has satisfied the requirement for a waiting period of one week under
13 the shared work unemployment compensation program as provided in
14 subsection (k)(4) of K.S.A. 44-757 and amendments thereto, which period
15 of one week, in either case, occurs within the benefit year which includes
16 the week for which the claimant is claiming benefits. No week shall be
17 counted as a week of unemployment for the purposes of this subsection

18 (d):

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

20 (B) if the individual fails to meet with the other eligibility require-
21 ments of this section; or

22 (C) if an individual is seeking unemployment benefits under the un-
23 employment compensation law of any other state or of the United States,
24 except that if the appropriate agency of such state or of the United States
25 finally determines that the claimant is not entitled to unemployment ben-
26 efits under such other law, this subsection (d)(1)(C) shall not apply.

27 (2) The waiting week requirement of paragraph (1) shall not apply to
28 new claims, filed on or after July 1, 2007, by claimants who become un-
29 employed as a result of an employer terminating business operations
30 within this state, declaring bankruptcy or initiating a work force reduction
31 pursuant to public law 100-379, the federal worker adjustment and re-
32 training notification act (29 U.S.C. 2101 through 2109), as amended. The
33 secretary shall adopt rules and regulations to administer the provisions of
34 this paragraph.

35 (3) (A) *Except as provided in subparagraph (B) of this paragraph, a*
36 *claimant shall become eligible to receive compensation for the waiting*
37 *period of one week, pursuant to paragraph (1), upon completion of three*
38 *weeks of unemployment consecutive to such waiting period.*

39 (B) *The provisions of subparagraph (A) shall not apply to any week*
40 *of employment that commences after the effective date of this act and*
41 *which ends on or before June 30, 2012.*

42 (e) For benefit years established on and after the effective date of
43 this act, the claimant has been paid total wages for insured work in the

1 claimant's base period of not less than 30 times the claimant's weekly
2 benefit amount and has been paid wages in more than one quarter of the
3 claimant's base period, except that the wage credits of an individual
4 earned during the period commencing with the end of a prior base period
5 and ending on the date on which such individual filed a valid initial claim
6 shall not be available for benefit purposes in a subsequent benefit year
7 unless, in addition thereto, such individual has returned to work and sub-
8 sequently earned wages for insured work in an amount equal to at least
9 eight times the claimant's current weekly benefit amount.

10 (f) The claimant participates in reemployment services, such as job
11 search assistance services, if the individual has been determined to be
12 likely to exhaust regular benefits and needs reemployment services pur-
13 suant to a profiling system established by the secretary, unless the sec-
14 retary determines that: (1) The individual has completed such services;
15 or (2) there is justifiable cause for the claimant's failure to participate in
16 such services.

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

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

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

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

30 Sec. 3. K.S.A. 2009 Supp. 44-706 is hereby amended to read as fol-
31 lows: 44-706. An individual shall be disqualified for benefits:

32 (a) If the individual left work voluntarily without good cause attrib-
33 utable to the work or the employer, subject to the other provisions of this
34 subsection (a). Failure to return to work after expiration of approved
35 personal or medical leave, or both, shall be considered a voluntary res-
36 ignation. After a temporary job assignment, failure of an individual to
37 affirmatively request an additional assignment on the next succeeding
38 workday, if required by the employment agreement, after completion of
39 a given work assignment, shall constitute leaving work voluntarily. The
40 disqualification shall begin the day following the separation and shall con-
41 tinue until after the individual has become reemployed and has had earn-
42 ings from insured work of at least three times the individual's weekly
43 benefit amount. An individual shall not be disqualified under this sub-

1 section (a) if:

2 (1) The individual was forced to leave work because of illness or injury
3 upon the advice of a licensed and practicing health care provider and,
4 upon learning of the necessity for absence, immediately notified the em-
5 ployer thereof, or the employer consented to the absence, and after re-
6 covery from the illness or injury, when recovery was certified by a prac-
7 ticing health care provider, the individual returned to the employer and
8 offered to perform services and the individual's regular work or compa-
9 rable and suitable work was not available; as used in this paragraph (1)
10 "health care provider" means any person licensed by the proper licensing
11 authority of any state to engage in the practice of medicine and surgery,
12 osteopathy, chiropractic, dentistry, optometry, podiatry or psychology;

13 (2) the individual left temporary work to return to the regular
14 employer;

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

17 ~~(4) the individual left work because of the voluntary or involuntary~~
18 ~~transfer of the individual's spouse from one job to another job, which is~~
19 ~~for the same employer or for a different employer, at a geographic loca-~~
20 ~~tion which makes it unreasonable for the individual to continue work at~~
21 ~~the individual's job;~~

22 ~~(5)~~ (4) the individual left work because of hazardous working condi-
23 tions; in determining whether or not working conditions are hazardous
24 for an individual, the degree of risk involved to the individual's health,
25 safety and morals, the individual's physical fitness and prior training and
26 the working conditions of workers engaged in the same or similar work
27 for the same and other employers in the locality shall be considered; as
28 used in this paragraph (5), "hazardous working conditions" means work-
29 ing conditions that could result in a danger to the physical or mental well-
30 being of the individual; each determination as to whether hazardous work-
31 ing conditions exist shall include, but shall not be limited to, a
32 consideration of (A) the safety measures used or the lack thereof, and (B)
33 the condition of equipment or lack of proper equipment; no work shall
34 be considered hazardous if the working conditions surrounding the in-
35 dividual's work are the same or substantially the same as the working
36 conditions generally prevailing among individuals performing the same
37 or similar work for other employers engaged in the same or similar type
38 of activity;

39 ~~(6)~~ (5) the individual left work to enter training approved under sec-
40 tion 236(a)(1) of the federal trade act of 1974, provided the work left is
41 not of a substantially equal or higher skill level than the individual's past
42 adversely affected employment (as defined for purposes of the federal
43 trade act of 1974), and wages for such work are not less than 80% of the

1 individual's average weekly wage as determined for the purposes of the
2 federal trade act of 1974;

3 ~~(7)~~ (6) the individual left work because of unwelcome harassment of
4 the individual by the employer or another employee of which the em-
5 ploying unit had knowledge;

6 ~~(8)~~ (7) the individual left work to accept better work; each determi-
7 nation as to whether or not the work accepted is better work shall include,
8 but shall not be limited to, consideration of (A) the rate of pay, the hours
9 of work and the probable permanency of the work left as compared to
10 the work accepted, (B) the cost to the individual of getting to the work
11 left in comparison to the cost of getting to the work accepted, and (C)
12 the distance from the individual's place of residence to the work accepted
13 in comparison to the distance from the individual's residence to the work
14 left;

15 ~~(9)~~ (8) the individual left work as a result of being instructed or re-
16 quested by the employer, a supervisor or a fellow employee to perform
17 a service or commit an act in the scope of official job duties which is in
18 violation of an ordinance or statute;

19 ~~(10)~~ (9) the individual left work because of a violation of the work
20 agreement by the employing unit and, before the individual left, the in-
21 dividual had exhausted all remedies provided in such agreement for the
22 settlement of disputes before terminating; *or*

23 ~~(11)~~ (10) after making reasonable efforts to preserve the work, the
24 individual left work due to a personal emergency of such nature and
25 compelling urgency that it would be contrary to good conscience to im-
26 pose a disqualification; ~~or.~~

27 ~~(12)~~ (11) (A) the individual left work due to circumstances resulting
28 from domestic violence, including:

29 (i) The individual's reasonable fear of future domestic violence at or
30 en route to or from the individual's place of employment; or

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

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

35 (iv) the individual's need to leave employment as a condition of re-
36 ceiving services or shelter from an agency which provides support services
37 or shelter to victims of domestic violence; or

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

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

- 1 (i) A restraining order or other documentation of equitable relief by
2 a court of competent jurisdiction; or
3 (ii) a police record documenting the abuse; or
4 (iii) documentation that the abuser has been convicted of one or more
5 of the offenses enumerated in articles 34 and 35 of chapter 21 of the
6 Kansas Statutes Annotated, and amendments thereto, where the victim
7 was a family or household member; or
8 (iv) medical documentation of the abuse; or
9 (v) a statement provided by a counselor, social worker, health care
10 provider, clergy, shelter worker, legal advocate, domestic violence or sex-
11 ual assault advocate or other professional who has assisted the individual
12 in dealing with the effects of abuse on the individual or the individual's
13 family; or
14 (vi) a sworn statement from the individual attesting to the abuse.
- 15 (C) No evidence of domestic violence experienced by an individual,
16 including the individual's statement and corroborating evidence, shall be
17 disclosed by the department of labor unless consent for disclosure is given
18 by the individual.
- 19 (b) If the individual has been discharged for misconduct connected
20 with the individual's work. The disqualification shall begin the day follow-
21 ing the separation and shall continue until after the individual becomes
22 reemployed and has had earnings from insured work of at least three
23 times the individual's determined weekly benefit amount, except that if
24 an individual is discharged for gross misconduct connected with the in-
25 dividual's work, such individual shall be disqualified for benefits until such
26 individual again becomes employed and has had earnings from insured
27 work of at least eight times such individual's determined weekly benefit
28 amount. In addition, all wage credits attributable to the employment from
29 which the individual was discharged for gross misconduct connected with
30 the individual's work shall be canceled. No such cancellation of wage
31 credits shall affect prior payments made as a result of a prior separation.
- 32 (1) For the purposes of this subsection (b), "misconduct" is defined
33 as a violation of a duty or obligation reasonably owed the employer as a
34 condition of employment. The term "gross misconduct" as used in this
35 subsection (b) shall be construed to mean conduct evincing extreme, will-
36 ful or wanton misconduct as defined by this subsection (b). Failure of the
37 employee to notify the employer of an absence shall be considered prima
38 facie evidence of a violation of a duty or obligation reasonably owed the
39 employer as a condition of employment.
- 40 (2) For the purposes of this subsection (b), the use of or impairment
41 caused by alcoholic liquor, a cereal malt beverage or a nonprescribed
42 controlled substance by an individual while working shall be conclusive
43 evidence of misconduct and the possession of alcoholic liquor, a cereal

1 malt beverage or a nonprescribed controlled substance by an individual
2 while working shall be prima facie evidence of conduct which is a violation
3 of a duty or obligation reasonably owed to the employer as a condition of
4 employment. Alcoholic liquor shall be defined as provided in K.S.A. 41-
5 102, and amendments thereto. Cereal malt beverage shall be defined as
6 provided in K.S.A. 41-2701, and amendments thereto. Controlled sub-
7 stance shall be defined as provided in K.S.A. 2009 Supp. 21-36a01, and
8 amendments thereto. As used in this subsection (b)(2), “required by law”
9 means required by a federal or state law, a federal or state rule or regu-
10 lation having the force and effect of law, a county resolution or municipal
11 ordinance, or a policy relating to public safety adopted in open meeting
12 by the governing body of any special district or other local governmental
13 entity. Chemical test shall include, but is not limited to, tests of urine,
14 blood or saliva. A positive chemical test shall mean a chemical result
15 showing a concentration at or above the levels listed in K.S.A. 44-501,
16 and amendments thereto, for the drugs or abuse listed therein. A positive
17 breath test shall mean a test result showing an alcohol concentration of
18 .04 or greater. Alcohol concentration means the number of grams of al-
19cohol per 210 liters of breath. An individual’s refusal to submit to a chem-
20 ical test or breath alcohol test shall be conclusive evidence of misconduct
21 if the test meets the standards of the drug free workplace act, 41 U.S.C.
22 701 et seq.; the test was administered as part of an employee assistance
23 program or other drug or alcohol treatment program in which the em-
24 ployee was participating voluntarily or as a condition of further employ-
25 ment; the test was otherwise required by law and the test constituted a
26 required condition of employment for the individual’s job; the test was
27 requested pursuant to a written policy of the employer of which the em-
28 ployee had knowledge and was a required condition of employment; or
29 there was probable cause to believe that the individual used, possessed
30 or was impaired by alcoholic liquor, a cereal malt beverage or a controlled
31 substance while working. A positive breath alcohol test or a positive chem-
32 ical test shall be conclusive evidence to prove misconduct if the following
33 conditions are met:

34 (A) Either (i) the test was required by law and was administered pur-
35 suant to the drug free workplace act, 41 U.S.C. 701 et seq., (ii) the test
36 was administered as part of an employee assistance program or other drug
37 or alcohol treatment program in which the employee was participating
38 voluntarily or as a condition of further employment, (iii) the test was
39 requested pursuant to a written policy of the employer of which the em-
40 ployee had knowledge and was a required condition of employment, (iv)
41 the test was required by law and the test constituted a required condition
42 of employment for the individual’s job, or (v) there was probable cause
43 to believe that the individual used, had possession of, or was impaired by

1 alcoholic liquor, the cereal malt beverage or the controlled substance
2 while working;

3 (B) the test sample was collected either (i) as prescribed by the drug
4 free workplace act, 41 U.S.C. 701 et seq., (ii) as prescribed by an em-
5 ployee assistance program or other drug or alcohol treatment program in
6 which the employee was participating voluntarily or as a condition of
7 further employment, (iii) as prescribed by the written policy of the em-
8 ployer of which the employee had knowledge and which constituted a
9 required condition of employment, (iv) as prescribed by a test which was
10 required by law and which constituted a required condition of employ-
11 ment for the individual's job, or (v) at a time contemporaneous with the
12 events establishing probable cause;

13 (C) the collecting and labeling of a chemical test sample was per-
14 formed by a licensed health care professional or any other individual
15 certified pursuant to paragraph (b)(2)(F) or authorized to collect or label
16 test samples by federal or state law, or a federal or state rule or regulation
17 having the force or effect of law, including law enforcement personnel;

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

23 (E) the chemical test was confirmed by gas chromatography, gas
24 chromatography-mass spectroscopy or other comparably reliable analyt-
25 ical method, except that no such confirmation is required for a blood
26 alcohol sample or a breath alcohol test;

27 (F) the breath alcohol test was administered by an individual trained
28 to perform breath tests, the breath testing instrument used was certified
29 and operated strictly according to description provided by the manufac-
30 turers and the reliability of the instrument performance was assured by
31 testing with alcohol standards; and

32 (G) the foundation evidence must establish, beyond a reasonable
33 doubt, that the test results were from the sample taken from the
34 individual.

35 (3) (A) For the purposes of this subsection (b), misconduct shall in-
36 clude, but not be limited to repeated absence, including incarceration,
37 resulting in absence from work of three days or longer, excluding Satur-
38 days, Sundays and legal holidays, and lateness, from scheduled work if
39 the facts show:

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

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

43 (iii) the employer gave or sent written notice to the individual, at the

1 individual's last known address, that future absence may or will result in
2 discharge; and
3 (iv) the employee had knowledge of the employer's written absen-
4 teeism policy.
5 (B) For the purposes of this subsection (b), if an employee disputes
6 being absent without good cause, the employee shall present evidence
7 that a majority of the employee's absences were for good cause. If the
8 employee alleges that the employee's repeated absences were the result
9 of health related issues, such evidence shall include documentation from
10 a licensed and practicing health care provider as defined in subsection
11 (a)(1).
12 (4) An individual shall not be disqualified under this subsection if the
13 individual is discharged under the following circumstances:
14 (A) The employer discharged the individual after learning the indi-
15 vidual was seeking other work or when the individual gave notice of future
16 intent to quit;
17 (B) the individual was making a good-faith effort to do the assigned
18 work but was discharged due to: (i) Inefficiency, (ii) unsatisfactory per-
19 formance due to inability, incapacity or lack of training or experience, (iii)
20 isolated instances of ordinary negligence or inadvertence, (iv) good-faith
21 errors in judgment or discretion, or (v) unsatisfactory work or conduct
22 due to circumstances beyond the individual's control; or
23 (C) the individual's refusal to perform work in excess of the contract
24 of hire.
25 (c) If the individual has failed, without good cause, to either apply
26 for suitable work when so directed by the employment office of the sec-
27 retary of labor, or to accept suitable work when offered to the individual
28 by the employment office, the secretary of labor, or an employer, such
29 disqualification shall begin with the week in which such failure occurred
30 and shall continue until the individual becomes reemployed and has had
31 earnings from insured work of at least three times such individual's de-
32 termined weekly benefit amount. In determining whether or not any work
33 is suitable for an individual, the secretary of labor, or a person or persons
34 designated by the secretary, shall consider the degree of risk involved to
35 health, safety and morals, physical fitness and prior training, experience
36 and prior earnings, length of unemployment and prospects for securing
37 local work in the individual's customary occupation or work for which the
38 individual is reasonably fitted by training or experience, and the distance
39 of the available work from the individual's residence. Notwithstanding
40 any other provisions of this act, an otherwise eligible individual shall not
41 be disqualified for refusing an offer of suitable employment, or failing to
42 apply for suitable employment when notified by an employment office,
43 or for leaving the individual's most recent work accepted during approved

1 training, including training approved under section 236(a)(1) of the trade
2 act of 1974, if the acceptance of or applying for suitable employment or
3 continuing such work would require the individual to terminate approved
4 training and no work shall be deemed suitable and benefits shall not be
5 denied under this act to any otherwise eligible individual for refusing to
6 accept new work under any of the following conditions: (1) If the position
7 offered is vacant due directly to a strike, lockout or other labor dispute;
8 (2) if the remuneration, hours or other conditions of the work offered are
9 substantially less favorable to the individual than those prevailing for sim-
10 ilar work in the locality; (3) if as a condition of being employed, the
11 individual would be required to join or to resign from or refrain from
12 joining any labor organization; (4) if the individual left employment as a
13 result of domestic violence, and the position offered does not reasonably
14 accommodate the individual's physical, psychological, safety, and/or legal
15 needs relating to such domestic violence.

16 (d) For any week with respect to which the secretary of labor, or a
17 person or persons designated by the secretary, finds that the individual's
18 unemployment is due to a stoppage of work which exists because of a
19 labor dispute or there would have been a work stoppage had normal
20 operations not been maintained with other personnel previously and cur-
21 rently employed by the same employer at the factory, establishment or
22 other premises at which the individual is or was last employed, except
23 that this subsection (d) shall not apply if it is shown to the satisfaction of
24 the secretary of labor, or a person or persons designated by the secretary,
25 that: (1) The individual is not participating in or financing or directly
26 interested in the labor dispute which caused the stoppage of work; and
27 (2) the individual does not belong to a grade or class of workers of which,
28 immediately before the commencement of the stoppage, there were
29 members employed at the premises at which the stoppage occurs any of
30 whom are participating in or financing or directly interested in the dis-
31 pute. If in any case separate branches of work which are commonly con-
32 ducted as separate businesses in separate premises are conducted in sep-
33 arate departments of the same premises, each such department shall, for
34 the purpose of this subsection (d) be deemed to be a separate factory,
35 establishment or other premises. For the purposes of this subsection (d),
36 failure or refusal to cross a picket line or refusal for any reason during
37 the continuance of such labor dispute to accept the individual's available
38 and customary work at the factory, establishment or other premises where
39 the individual is or was last employed shall be considered as participation
40 and interest in the labor dispute.

41 (e) For any week with respect to which or a part of which the indi-
42 vidual has received or is seeking unemployment benefits under the un-
43 employment compensation law of any other state or of the United States,

1 except that if the appropriate agency of such other state or the United
2 States finally determines that the individual is not entitled to such un-
3 employment benefits, this disqualification shall not apply.

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

9 (g) For the period of one year beginning with the first day following
10 the last week of unemployment for which the individual received benefits,
11 or for one year from the date the act was committed, whichever is the
12 later, if the individual, or another in such individual's behalf with the
13 knowledge of the individual, has knowingly made a false statement or
14 representation, or has knowingly failed to disclose a material fact to obtain
15 or increase benefits under this act or any other unemployment compen-
16 sation law administered by the secretary of labor.

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

21 (i) For any week of unemployment on the basis of service in an in-
22 structional, research or principal administrative capacity for an educa-
23 tional institution as defined in subsection (v) of K.S.A. 44-703, and
24 amendments thereto, if such week begins during the period between two
25 successive academic years or terms or, when an agreement provides in-
26 stead for a similar period between two regular but not successive terms
27 during such period or during a period of paid sabbatical leave provided
28 for in the individual's contract, if the individual performs such services in
29 the first of such academic years or terms and there is a contract or a
30 reasonable assurance that such individual will perform services in any
31 such capacity for any educational institution in the second of such aca-
32 demic years or terms.

33 (j) For any week of unemployment on the basis of service in any
34 capacity other than service in an instructional, research, or administrative
35 capacity in an educational institution, as defined in subsection (v) of
36 K.S.A. 44-703, and amendments thereto, if such week begins during the
37 period between two successive academic years or terms if the individual
38 performs such services in the first of such academic years or terms and
39 there is a reasonable assurance that the individual will perform such serv-
40 ices in the second of such academic years or terms, except that if benefits
41 are denied to the individual under this subsection (j) and the individual
42 was not offered an opportunity to perform such services for the educa-
43 tional institution for the second of such academic years or terms, such

1 individual shall be entitled to a retroactive payment of benefits for each
2 week for which the individual filed a timely claim for benefits and for
3 which benefits were denied solely by reason of this subsection (j).

4 (k) For any week of unemployment on the basis of service in any
5 capacity for an educational institution as defined in subsection (v) of
6 K.S.A. 44-703, and amendments thereto, if such week begins during an
7 established and customary vacation period or holiday recess, if the indi-
8 vidual performs services in the period immediately before such vacation
9 period or holiday recess and there is a reasonable assurance that such
10 individual will perform such services in the period immediately following
11 such vacation period or holiday recess.

12 (l) For any week of unemployment on the basis of any services, sub-
13 stantially all of which consist of participating in sports or athletic events
14 or training or preparing to so participate, if such week begins during the
15 period between two successive sport seasons or similar period if such
16 individual performed services in the first of such seasons or similar per-
17 iods and there is a reasonable assurance that such individual will perform
18 such services in the later of such seasons or similar periods.

19 (m) For any week on the basis of services performed by an alien
20 unless such alien is an individual who was lawfully admitted for perma-
21 nent residence at the time such services were performed, was lawfully
22 present for purposes of performing such services, or was permanently
23 residing in the United States under color of law at the time such services
24 were performed, including an alien who was lawfully present in the
25 United States as a result of the application of the provisions of section
26 212(d)(5) of the federal immigration and nationality act. Any data or in-
27 formation required of individuals applying for benefits to determine
28 whether benefits are not payable to them because of their alien status
29 shall be uniformly required from all applicants for benefits. In the case
30 of an individual whose application for benefits would otherwise be ap-
31 proved, no determination that benefits to such individual are not payable
32 because of such individual's alien status shall be made except upon a
33 preponderance of the evidence.

34 (n) For any week in which an individual is receiving a governmental
35 or other pension, retirement or retired pay, annuity or other similar pe-
36 riodic payment under a plan maintained by a base period employer and
37 to which the entire contributions were provided by such employer, except
38 that: (1) If the entire contributions to such plan were provided by the
39 base period employer but such individual's weekly benefit amount ex-
40 ceeds such governmental or other pension, retirement or retired pay,
41 annuity or other similar periodic payment attributable to such week, the
42 weekly benefit amount payable to the individual shall be reduced (but
43 not below zero) by an amount equal to the amount of such pension,

1 retirement or retired pay, annuity or other similar periodic payment
2 which is attributable to such week; or (2) if only a portion of contributions
3 to such plan were provided by the base period employer, the weekly
4 benefit amount payable to such individual for such week shall be reduced
5 (but not below zero) by the prorated weekly amount of the pension, re-
6 tirement or retired pay, annuity or other similar periodic payment after
7 deduction of that portion of the pension, retirement or retired pay, an-
8 nuity or other similar periodic payment that is directly attributable to the
9 percentage of the contributions made to the plan by such individual; or
10 (3) if the entire contributions to the plan were provided by such individ-
11 ual, or by the individual and an employer (or any person or organization)
12 who is not a base period employer, no reduction in the weekly benefit
13 amount payable to the individual for such week shall be made under this
14 subsection (n); or (4) whatever portion of contributions to such plan were
15 provided by the base period employer, if the services performed for the
16 employer by such individual during the base period, or remuneration
17 received for the services, did not affect the individual's eligibility for, or
18 increased the amount of, such pension, retirement or retired pay, annuity
19 or other similar periodic payment, no reduction in the weekly benefit
20 amount payable to the individual for such week shall be made under this
21 subsection (n). No reduction shall be made for payments made under the
22 social security act or railroad retirement act of 1974.

23 (o) For any week of unemployment on the basis of services per-
24 formed in any capacity and under any of the circumstances described in
25 subsection (i), (j) or (k) which an individual performed in an educational
26 institution while in the employ of an educational service agency. For the
27 purposes of this subsection (o), the term "educational service agency"
28 means a governmental agency or entity which is established and operated
29 exclusively for the purpose of providing such services to one or more
30 educational institutions.

31 (p) For any week of unemployment on the basis of service as a school
32 bus or other motor vehicle driver employed by a private contractor to
33 transport pupils, students and school personnel to or from school-related
34 functions or activities for an educational institution, as defined in subsec-
35 tion (v) of K.S.A. 44-703, and amendments thereto, if such week begins
36 during the period between two successive academic years or during a
37 similar period between two regular terms, whether or not successive, if
38 the individual has a contract or contracts, or a reasonable assurance
39 thereof, to perform services in any such capacity with a private contractor
40 for any educational institution for both such academic years or both such
41 terms. An individual shall not be disqualified for benefits as provided in
42 this subsection (p) for any week of unemployment on the basis of service
43 as a bus or other motor vehicle driver employed by a private contractor

- 1 to transport persons to or from nonschool-related functions or activities.
- 2 (q) For any week of unemployment on the basis of services per-
3 formed by the individual in any capacity and under any of the circum-
4 stances described in subsection (i), (j), (k) or (o) which are provided to
5 or on behalf of an educational institution, as defined in subsection (v) of
6 K.S.A. 44-703, and amendments thereto, while the individual is in the
7 employ of an employer which is a governmental entity, Indian tribe or
8 any employer described in section 501(c)(3) of the federal internal rev-
9 enue code of 1986 which is exempt from income under section 501(a) of
10 the code.
- 11 (r) For any week in which an individual is registered at and attending
12 an established school, training facility or other educational institution, or
13 is on vacation during or between two successive academic years or terms.
14 An individual shall not be disqualified for benefits as provided in this
15 subsection (r) provided:
- 16 (1) The individual was engaged in full-time employment concurrent
17 with the individual's school attendance; or
- 18 (2) the individual is attending approved training as defined in sub-
19 section (s) of K.S.A. 44-703 and amendments thereto; or
- 20 (3) the individual is attending evening, weekend or limited day time
21 classes, which would not affect availability for work, and is otherwise
22 eligible under subsection (c) of K.S.A. 44-705 and amendments thereto.
- 23 (s) For any week with respect to which an individual is receiving or
24 has received remuneration in the form of a back pay award or settlement.
25 The remuneration shall be allocated to the week or weeks in the manner
26 as specified in the award or agreement, or in the absence of such speci-
27 ficity in the award or agreement, such remuneration shall be allocated to
28 the week or weeks in which such remuneration, in the judgment of the
29 secretary, would have been paid.
- 30 (1) For any such weeks that an individual receives remuneration in
31 the form of a back pay award or settlement, an overpayment will be
32 established in the amount of unemployment benefits paid and shall be
33 collected from the claimant.
- 34 (2) If an employer chooses to withhold from a back pay award or
35 settlement, amounts paid to a claimant while they claimed unemployment
36 benefits, such employer shall pay the department the amount withheld.
37 With respect to such amount, the secretary shall have available all of the
38 collection remedies authorized or provided in K.S.A. 44-717, and amend-
39 ments thereto.
- 40 (t) If the individual has been discharged for failing a preemployment
41 drug screen required by the employer and if such discharge occurs not
42 later than seven days after the employer is notified of the results of such
43 drug screen. The disqualification shall begin the day following the sepa-

1 ration and shall continue until after the individual becomes reemployed
2 and has had earnings from insured work of at least three times the indi-
3 vidual's determined weekly benefit amount.

4 (u) If the individual was found not to have a disqualifying adjudication
5 or conviction under K.S.A. 39-970, and amendments thereto, or K.S.A.
6 65-5117, and amendments thereto, was hired and then was subsequently
7 convicted of a disqualifying felony under K.S.A. 39-970, and amendments
8 thereto, or K.S.A. 65-5117, and amendments thereto, and discharged pur-
9 suant to K.S.A. 39-970, and amendments thereto, or K.S.A. 65-5117, and
10 amendments thereto. The disqualification shall begin the day following
11 the separation and shall continue until after the individual becomes reem-
12 ployed and has had earnings from insured work of at least three times
13 the individual's determined weekly benefit amount.

14 Sec. 4. K.S.A. 2009 Supp. 44-703, 44-704c, 44-705 and 44-706 are
15 hereby repealed.

16 Sec. 5. This act shall take effect and be in force from and after its
17 publication in the Kansas register.