

## SENATE BILL No. 552

By Committee on Ways and Means

2-19

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9 AN ACT concerning the employment security law; pertaining to payment  
10 of benefits; pertaining to negative account balance employers; pertain-  
11 ing to amount of employer contributions; amending K.S.A. 2009 Supp.  
12 44-703, 44-704 and 44-710a and repealing the existing sections.  
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 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  
43

- 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, *in excess of* \$4,200  
42 for the calendar years 1972 to 1977, inclusive, *in excess of* \$6,000 for  
43 calendar years 1978 to 1982, inclusive, *in excess of* \$7,000 for the calendar

1 year 1983, and ~~the amount stated herein~~ with respect to employment during any calendar  
2 year following 1983 in excess of \$8,000 for the calendar years 1984 to  
3 2010, inclusive, in excess of \$9,000 for the calendar year 2011, and in  
4 excess of \$10,000 for the calendar year 2012, and the amount shall be  
5 adjusted by the percentage change in the annual average wage for each  
6 calendar year following 2012, except that if the definition of the term  
7 “wages” as contained in the federal unemployment tax act is amended to  
8 include remuneration in excess of ~~\$8,000~~ the amount stated herein paid  
9 to an individual by an employer under the federal act during any calendar  
10 year, wages shall include remuneration paid in a calendar year to an in-  
11 dividual by an employer subject to this act or such employer’s predecessor  
12 with respect to employment during any calendar year up to an amount  
13 equal to the dollar limitation specified in the federal unemployment tax  
14 act. For the purposes of this subsection (o)(1), the term “employment”  
15 shall include service constituting employment under any employment se-  
16 curity law of another state or of the federal government;

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

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

36 (4) any payment made to, or on behalf of, an employee or such em-  
37 ployee’s beneficiary;

38 (A) From or to a trust described in section 401(a) of the federal in-  
39 ternal revenue code of 1986 which is exempt from tax under section  
40 501(a) of the federal internal revenue code of 1986 at the time of such  
41 payment unless such payment is made to an employee of the trust as  
42 remuneration for services rendered as such employee and not as a ben-  
43 efitary of the trust;

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

1 if the employee's employment relationship had not been so terminated;  
2 (9) remuneration for agricultural labor paid in any medium other than  
3 cash;

4 (10) any payment made, or benefit furnished, to or for the benefit of  
5 an employee if at the time of such payment or such furnishing it is rea-  
6 sonable to believe that the employee will be able to exclude such payment  
7 or benefit from income under section 129 of the federal internal revenue  
8 code of 1986 which relates to dependent care assistance programs;

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

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

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

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

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

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

37 Any amount deferred under a nonqualified deferred compensation  
38 plan shall be taken into account for purposes of this section as of the later  
39 of when the services are performed or when there is no substantial risk  
40 of forfeiture of the rights to such amount. Any amount taken into account  
41 as wages by reason of this paragraph, and the income attributable thereto,  
42 shall not thereafter be treated as wages for purposes of this section. For  
43 purposes of this paragraph, the term "nonqualified deferred compensa-

- 1 tion plan” means any plan or other arrangement for deferral of compen-  
2 sation other than a plan described in subsection (o)(4).
- 3 (p) “Week” means such period or periods of seven consecutive cal-  
4 endar days, as the secretary may by rules and regulations prescribe.
- 5 (q) “Calendar quarter” means the period of three consecutive cal-  
6 endar months ending March 31, June 30, September 30 or December  
7 31, or the equivalent thereof as the secretary may by rules and regulations  
8 prescribe.
- 9 (r) “Insured work” means employment for employers.
- 10 (s) “Approved training” means any vocational training course or  
11 course in basic education skills, including a job training program author-  
12 ized under the federal workforce investment act of 1998, approved by  
13 the secretary or a person or persons designated by the secretary.
- 14 (t) “American vessel” or “American aircraft” means any vessel or air-  
15 craft documented or numbered or otherwise registered under the laws  
16 of the United States; and any vessel or aircraft which is neither docu-  
17 mented or numbered or otherwise registered under the laws of the  
18 United States nor documented under the laws of any foreign country, if  
19 its crew performs service solely for one or more citizens or residents of  
20 the United States or corporations organized under the laws of the United  
21 States or of any state.
- 22 (u) “Institution of higher education,” for the purposes of this section,  
23 means an educational institution which:
- 24 (1) Admits as regular students only individuals having a certificate of  
25 graduation from a high school, or the recognized equivalent of such a  
26 certificate;
- 27 (2) is legally authorized in this state to provide a program of education  
28 beyond high school;
- 29 (3) provides an educational program for which it awards a bachelor’s  
30 or higher degree, or provides a program which is acceptable for full credit  
31 toward such a degree, a program of postgraduate or postdoctoral studies,  
32 or a program of training to prepare students for gainful employment in a  
33 recognized occupation; and
- 34 (4) is a public or other nonprofit institution.
- 35 Notwithstanding any of the foregoing provisions of this subsection (u),  
36 all colleges and universities in this state are institutions of higher educa-  
37 tion for purposes of this section, except that no college, university, junior  
38 college or other postsecondary school or institution which is operated by  
39 the federal government or any agency thereof shall be an institution of  
40 higher education for purposes of the employment security law.
- 41 (v) “Educational institution” means any institution of higher educa-  
42 tion, as defined in subsection (u) of this section, or any institution, except  
43 private for profit institutions, in which participants, trainees or students

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

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

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

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

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

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

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

40 (iii) the provisions of paragraphs (i) and (ii) above of this subsection  
41 (w)(1)(D) shall not be deemed to be applicable with respect to service  
42 performed in connection with commercial canning or commercial freez-  
43 ing or in connection with any agricultural or horticultural commodity after

- 1 its delivery to a terminal market for distribution for consumption.
- 2 (E) On a farm operated for profit if such service is not in the course  
3 of the employer's trade or business.
- 4 (2) "Agricultural labor" does not include service performed prior to  
5 January 1, 1980, by an individual who is an alien admitted to the United  
6 States to perform service in agricultural labor pursuant to sections 214(c)  
7 and 101(a)(15)(H) of the federal immigration and nationality act.
- 8 (3) As used in this subsection (w), the term "farm" includes stock,  
9 dairy, poultry, fruit, fur-bearing animal, and truck farms, plantations,  
10 ranches, nurseries, ranges, greenhouses, or other similar structures used  
11 primarily for the raising of agricultural or horticultural commodities, and  
12 orchards.
- 13 (4) For the purpose of this section, if an employing unit does not  
14 maintain sufficient records to separate agricultural labor from other em-  
15 ployment, all services performed during any pay period by an individual  
16 for the person employing such individual shall be deemed to be agricul-  
17 tural labor if services performed during  $\frac{1}{2}$  or more of such pay period  
18 constitute agricultural labor; but if the services performed during more  
19 than  $\frac{1}{2}$  of any such pay period by an individual for the person employing  
20 such individual do not constitute agricultural labor, then none of the serv-  
21 ices of such individual for such period shall be deemed to be agricultural  
22 labor. As used in this subsection (w), the term "pay period" means a  
23 period of not more than 31 consecutive days for which a payment of  
24 remuneration is ordinarily made to the individual by the person employ-  
25 ing such individual.
- 26 (x) "Reimbursing employer" means any employer who makes pay-  
27 ments in lieu of contributions to the employment security fund as pro-  
28 vided in subsection (e) of K.S.A. 44-710 and amendments thereto.
- 29 (y) "Contributing employer" means any employer other than a re-  
30 imbursing employer or rated governmental employer.
- 31 (z) "Wage combining plan" means a uniform national arrangement  
32 approved by the United States secretary of labor in consultation with the  
33 state unemployment compensation agencies and in which this state shall  
34 participate, whereby wages earned in one or more states are transferred  
35 to another state, called the "paying state," and combined with wages in  
36 the paying state, if any, for the payment of benefits under the laws of the  
37 paying state and as provided by an arrangement so approved by the  
38 United States secretary of labor.
- 39 (aa) "Domestic service" means any service for a person in the oper-  
40 ation and maintenance of a private household, local college club or local  
41 chapter of a college fraternity or sorority, as distinguished from service  
42 as an employee in the pursuit of an employer's trade, occupation, pro-  
43 fession, enterprise or vocation.

- 1 (bb) “Rated governmental employer” means any governmental entity  
2 which elects to make payments as provided by K.S.A. 44-710d and  
3 amendments thereto.
- 4 (cc) “Benefit cost payments” means payments made to the employ-  
5 ment security fund by a governmental entity electing to become a rated  
6 governmental employer.
- 7 (dd) “Successor employer” means any employer, as described in sub-  
8 section (h) of this section, which acquires or in any manner succeeds to  
9 (1) substantially all of the employing enterprises, organization, trade or  
10 business of another employer or (2) substantially all the assets of another  
11 employer.
- 12 (ee) “Predecessor employer” means an employer, as described in  
13 subsection (h) of this section, who has previously operated a business or  
14 portion of a business with employment to which another employer has  
15 succeeded.
- 16 (ff) “Lessor employing unit” means any independently established  
17 business entity which engages in the business of providing leased em-  
18 ployees to a client lessee.
- 19 (gg) “Client lessee” means any individual, organization, partnership,  
20 corporation or other legal entity leasing employees from a lessor employ-  
21 ing unit.
- 22 (hh) “Qualifying injury” means a personal injury by accident arising  
23 out of and in the course of employment within the coverage of the Kansas  
24 workers compensation act, K.S.A. 44-501 et seq., and amendments  
25 thereto.
- 26 Sec. 2. K.S.A. 2009 Supp. 44-704 is hereby amended to read as fol-  
27 lows: 44-704. (a) *Payment of benefits*. All benefits provided herein shall  
28 be payable from the fund. All benefits shall be paid through the secretary  
29 of labor, in accordance with such rules and regulations as the secretary  
30 may adopt. Benefits based on service in employment defined in subsec-  
31 tions (i)(3)(E) and (i)(3)(F) of K.S.A. 44-703, and amendments thereto,  
32 shall be payable in the same amount, on the same terms and subject to  
33 the same conditions as compensation payable on the basis of other service  
34 subject to this act except as provided in subsection (e) of K.S.A. 44-705  
35 and subsection (e)(2) of K.S.A. 44-711, and amendments thereto.
- 36 (b) *Determined weekly benefit amount*. An individual’s determined  
37 weekly benefit amount shall be an amount equal to 4.25% of the individ-  
38 ual’s total wages for insured work paid during that calendar quarter of  
39 the individual’s base period in which such total wages were highest, sub-  
40 ject to the following limitations:
- 41 (1) If an individual’s determined weekly benefit amount is less than  
42 the minimum weekly benefit amount, it shall be raised to such minimum  
43 weekly benefit amount;

1 (2) if the individual's determined weekly benefit amount is more than  
2 the maximum weekly benefit amount, it shall be reduced to the maximum  
3 weekly benefit amount; and

4 (3) if the individual's determined weekly benefit amount is not a mul-  
5 tiple of \$1, it shall be reduced to the next lower multiple of \$1.

6 (c) *Maximum weekly benefit amount.* (1) *Except as provided in par-*  
7 *agraph (2) of this subsection,* on July 1 of each year, the secretary shall  
8 determine the maximum weekly benefit amount by computing 60% of  
9 the average weekly wages paid to employees in insured work during the  
10 previous calendar year and shall prior to that date announce the maximum  
11 weekly benefit amount so determined, by publication in the Kansas reg-  
12 ister. Such computation shall be made by dividing the gross wages re-  
13 ported as paid for insured work during the previous calendar year by the  
14 product of the average of midmonth employment during such calendar  
15 year multiplied by 52. The maximum weekly benefit amount so deter-  
16 mined and announced for the twelve-month period shall apply only to  
17 those claims filed in that period qualifying for maximum payment under  
18 the foregoing formula. All claims qualifying for payment at the maximum  
19 weekly benefit amount shall be paid at the maximum weekly benefit  
20 amount in effect when the benefit year to which the claim relates was  
21 first established, notwithstanding a change in the maximum benefit  
22 amount for a subsequent twelve-month period. If the computed maxi-  
23 mum weekly benefit amount is not a multiple of \$1, then the computed  
24 maximum weekly benefit amount shall be reduced to the next lower mul-  
25 tiple of \$1.

26 (2) (A) *For the year commencing on July 1, 2010, the maximum*  
27 *weekly benefit shall be the maximum weekly benefit determined by the*  
28 *secretary on July 1, 2009, or the maximum weekly benefit determined by*  
29 *the secretary on July 1, 2010, whichever is less.*

30 (B) *For the year commencing on July 1, 2011, the maximum weekly*  
31 *benefit shall be the maximum weekly benefit determined by the secretary*  
32 *on July 1, 2009, or the maximum weekly benefit determined by the sec-*  
33 *retary on July 1, 2011, whichever is less.*

34 (d) *Minimum weekly benefit amount.* The minimum weekly benefit  
35 amount payable to any individual shall be 25% of the maximum weekly  
36 benefit calculated in accordance with subsection (c) and shall be an-  
37 nounced by the secretary in conjunction with the published announce-  
38 ment of the maximum weekly benefit, also as provided in subsection (c).  
39 The minimum weekly benefit amount so determined and announced for  
40 the twelve-month period beginning July 1 of each year shall apply only  
41 to those claims which establish a benefit year filed within that twelve-  
42 month period and shall apply through the benefit year of such claims  
43 notwithstanding a change in such amount in a subsequent twelve-month

- 1 period. If the minimum weekly benefit amount is not a multiple of \$1 it  
2 shall be reduced to the next lower multiple of \$1.
- 3 (e) *Weekly benefit payable.* Each eligible individual who is unem-  
4 ployed with respect to any week, except as to final payment, shall be paid  
5 with respect to such week a benefit in an amount equal to such individ-  
6 ual's determined weekly benefit amount, less that part of the wage, if any,  
7 payable to such individual with respect to such week which is in excess  
8 of the amount which is equal to 25% of such individual's determined  
9 weekly benefit amount and if the resulting amount is not a multiple of  
10 \$1, it shall be reduced to the next lower multiple of \$1.
- 11 (1) For the purposes of this section, remuneration received under  
12 the following circumstances shall be construed as wages:
- 13 (A) Vacation pay that was attributable to a week that the individual  
14 claimed benefits while work was temporarily interrupted;
- 15 (B) holiday pay that was payable with no condition of attendance on  
16 other regularly scheduled day or days; and
- 17 (C) severance pay, if paid as scheduled, and all other employment  
18 benefits within the employer's control, as defined in subsection (e)(3), if  
19 continued as though the severance had not occurred, except as set out in  
20 subsection (e)(2)(D).
- 21 (2) For the purposes of this section, remuneration received under  
22 the following circumstances shall not be construed as wages:
- 23 (A) Remuneration received for services performed on a public assis-  
24 tance work project;
- 25 (B) vacation pay, except as set out in subsection (e)(1)(A) above;
- 26 (C) holiday pay that was not payable unless the individual complied  
27 with a condition of attendance on another regularly scheduled day or days;
- 28 (D) severance pay, in lieu of notice, under the provisions of public  
29 law 100-379, the federal worker adjustment and retraining notification  
30 act (29 U.S.C.A. 2101 through 2109);
- 31 (E) all other severance pay, separation pay, bonuses, wages in lieu of  
32 notice or remuneration of a similar nature that is payable after the sev-  
33 erance of the employment relationship, except as set out in subsection  
34 (e)(1)(C); and
- 35 (F) moneys received as federal social security payments.
- 36 (3) For the purposes of this subsection (e), "employment benefits  
37 within the employer's control" means benefits offered by the employer  
38 to employees which are employee benefit plans as defined by section 3  
39 of the federal employee retirement income security act of 1974, as  
40 amended, (29 U.S.C. 1002) and which the employer has the option to  
41 continue to provide to the employee after the last day that the employee  
42 worked for that employer.
- 43 (f) *Duration of benefits.* Any otherwise eligible individual shall be

1 entitled during any benefit year to a total amount of benefits equal to  
2 whichever is the lesser of 26 times such individual's weekly benefit  
3 amount, or  $\frac{1}{3}$  of such individual's wages for insured work paid during  
4 such individual's base period. Such total amount of benefits, if not a mul-  
5 tiple of \$1, shall be reduced to the next lower multiple of \$1.

6 (g) For the purposes of this section, wages shall be counted as "wages  
7 for insured work" for benefit purposes with respect to any benefit year  
8 only if such benefit year begins subsequent to the date on which the  
9 employing unit by whom such wages were paid has satisfied the condi-  
10 tions of subsection (h) of K.S.A. 44-703, and amendments thereto, with  
11 respect to becoming an employer.

12 Sec. 3. K.S.A. 2009 Supp. 44-710a is hereby amended to read as  
13 follows: 44-710a. (a) *Classification of employers by the secretary.* The  
14 term "employer" as used in this section refers to contributing employers.  
15 The secretary shall classify employers in accordance with their actual ex-  
16 perience in the payment of contributions on their own behalf and with  
17 respect to benefits charged against their accounts with a view of fixing  
18 such contribution rates as will reflect such experience. If, as of the date  
19 such classification of employers is made, the secretary finds that any em-  
20 ploying unit has failed to file any report required in connection therewith,  
21 or has filed a report which the secretary finds incorrect or insufficient,  
22 the secretary shall make an estimate of the information required from  
23 such employing unit on the basis of the best evidence reasonably available  
24 to the secretary at the time, and notify the employing unit thereof by mail  
25 addressed to its last known address. Unless such employing unit shall file  
26 the report or a corrected or sufficient report as the case may be, within  
27 15 days after the mailing of such notice, the secretary shall compute such  
28 employing unit's rate of contributions on the basis of such estimates, and  
29 the rate as so determined shall be subject to increase but not to reduction  
30 on the basis of subsequently ascertained information. The secretary shall  
31 determine the contribution rate of each employer in accordance with the  
32 requirements of this section.

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

37 (B) (i) For the rate year 2007 and each rate year thereafter, each  
38 employer who is not eligible for a rate contribution shall pay contributions  
39 equal to 4% of wages paid during each calendar year with regard to em-  
40 ployment except such employers engaged in the construction industry  
41 shall pay a rate equal to 6%.

42 (ii) For rate years prior to 2007, employers who are not eligible for a  
43 rate computation shall pay contributions at an assigned rate equal to the

1 sum of 1% plus the greater of the average rate assigned in the preceding  
2 calendar year to all employers in such industry sector or the average rate  
3 assigned to all covered employers during the preceding calendar year,  
4 except that in no instance shall any such assigned rate be less than 2%.  
5 Employers engaged in more than one type of industrial activity shall be  
6 classified by principal activity. All rates assigned will remain in effect for  
7 a complete calendar year. If the sale or acquisition of a new establishment  
8 would require reclassification of the employer to a different industry sec-  
9 tor, the employer would be promptly notified, and the contribution rate  
10 applicable to the new industry sector would become effective the follow-  
11 ing January 1.

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

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

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

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

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

40 (D) As of each computation date, the total of the taxable wages paid  
41 during the 12-month period prior to the computation date by all em-  
42 ployers eligible for rate computation, except negative account balance  
43 employers, shall be divided into 51 approximately equal parts designated

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

SCHEDULE I—Eligible Employers

	Column A	Column B	Column C
	Rate	Cumulative	Experience factor
	group	taxable payroll	(Ratio to total wages)
30	1	Less than 1.96% .....	.025%
31	2	1.96% but less than 3.92 .....	.04
32	3	3.92 but less than 5.88 .....	.08
33	4	5.88 but less than 7.84 .....	.12
34	5	7.84 but less than 9.80 .....	.16
35	6	9.80 but less than 11.76 .....	.20
36	7	11.76 but less than 13.72 .....	.24
37	8	13.72 but less than 15.68 .....	.28
38	9	15.68 but less than 17.64 .....	.32
39	10	17.64 but less than 19.60 .....	.36
40	11	19.60 but less than 21.56 .....	.40
41	12	21.56 but less than 23.52 .....	.44
42	13	23.52 but less than 25.48 .....	.48
43	14	25.48 but less than 27.44 .....	.52

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

38 (E) Negative account balance employers shall, in addition to paying  
 39 the rate provided for in subsection (a)(2)(B) of this section, pay a sur-  
 40 charge based on the size of the employer's negative reserve ratio, the  
 41 calculation which is provided for in subsection (a)(2) of this section. The  
 42 amount of the surcharge shall be determined from column B of schedule  
 43 II of this section. Each negative account balance employer who does not

1 satisfy the requirements to have an average annual payroll, as defined by  
 2 subsection (a)(2) of K.S.A. 44-703, and amendments thereto, shall be  
 3 assigned a surcharge ~~of 2% equal to the maximum negative ratio sur-~~  
 4 ~~charge from column B of schedule II of this section.~~ Contribution pay-  
 5 ments made pursuant to this subsection (a)(2)(E) shall be credited to the  
 6 appropriate account of such negative account balance employer.

7 SCHEDULE II—Surcharge on Negative Accounts

8 Column A	9 Column B
9 Negative Reserve Ratio	10 Surcharge as a percent of taxable wages
11 Less than 2.0% .....	0.20%
12 2.0% but less than 4.0 .....	.40
13 4.0 but less than 6.0 .....	.60
14 6.0 but less than 8.0 .....	.80
15 8.0 but less than 10.0 .....	1.00
16 10.0 but less than 12.0 .....	1.20
17 12.0 but less than 14.0 .....	1.40
18 14.0 but less than 16.0 .....	1.60
19 16.0 but less than 18.0 .....	1.80
20 18.0 <del>and over</del> but less than 20.0 .....	2.00
21 20.0 but less than 22.0 .....	2.20
22 22.0 but less than 24.0 .....	2.40
23 24.0 but less than 26.0 .....	2.60
24 26.0 but less than 28.0 .....	2.80
25 28.0 but less than 30.0 .....	3.00
26 30.0 but less than 32.0 .....	3.20
27 32.0 but less than 34.0 .....	3.40
28 34.0 but less than 36.0 .....	3.60
29 36.0 and over .....	3.80

30 (3) *Planned yield.* (A) The average required yield shall be determined  
 31 from schedule III of this section, and the planned yield on total wages in  
 32 column B of schedule III shall be determined by the reserve fund ratio  
 33 in column A of schedule III. The reserve fund ratio shall be determined  
 34 by dividing total assets in the employment security fund provided for in  
 35 subsection (a) of K.S.A. 44-712, and amendments thereto, excluding all  
 36 moneys credited to the account of this state pursuant to section 903 of  
 37 the federal social security act, as amended, which have been appropriated  
 38 by the state legislature, whether or not withdrawn from the trust fund,  
 39 and excluding contributions not yet paid on July 31 by total payrolls for  
 40 contributing employers for the preceding fiscal year which ended June  
 41 30.

42  
 43

1	SCHEDULE III—Fund Control	
2	Ratios to Total Wages	
3	Column A	Column B
4	Reserve Fund Ratio	Planned Yield
5	4.500 and over .....	0.00
6	4.475 but less than 4.500 .....	0.01
7	4.450 but less than 4.475 .....	0.02
8	4.425 but less than 4.450 .....	0.03
9	4.400 but less than 4.425 .....	0.04
10	4.375 but less than 4.400 .....	0.05
11	4.350 but less than 4.375 .....	0.06
12	4.325 but less than 4.350 .....	0.07
13	4.300 but less than 4.325 .....	0.08
14	4.275 but less than 4.300 .....	0.09
15	4.250 but less than 4.275 .....	0.10
16	4.225 but less than 4.250 .....	0.11
17	4.200 but less than 4.225 .....	0.12
18	4.175 but less than 4.200 .....	0.13
19	4.150 but less than 4.175 .....	0.14
20	4.125 but less than 4.150 .....	0.15
21	4.100 but less than 4.125 .....	0.16
22	4.075 but less than 4.100 .....	0.17
23	4.050 but less than 4.075 .....	0.18
24	4.025 but less than 4.050 .....	0.19
25	4.000 but less than 4.025 .....	0.20
26	3.950 but less than 4.000 .....	0.21
27	3.900 but less than 3.950 .....	0.22
28	3.850 but less than 3.900 .....	0.23
29	3.800 but less than 3.850 .....	0.24
30	3.750 but less than 3.800 .....	0.25
31	3.700 but less than 3.750 .....	0.26
32	3.650 but less than 3.700 .....	0.27
33	3.600 but less than 3.650 .....	0.28
34	3.550 but less than 3.600 .....	0.29
35	3.500 but less than 3.550 .....	0.30
36	3.450 but less than 3.500 .....	0.31
37	3.400 but less than 3.450 .....	0.32
38	3.350 but less than 3.400 .....	0.33
39	3.300 but less than 3.350 .....	0.34
40	3.250 but less than 3.300 .....	0.35
41	3.200 but less than 3.250 .....	0.36
42	3.150 but less than 3.200 .....	0.37
43	3.100 but less than 3.150 .....	0.38

1	3.050 but less than 3.100	0.39
2	3.000 but less than 3.050	0.40
3	2.950 but less than 3.000	0.41
4	2.900 but less than 2.950	0.42
5	2.850 but less than 2.900	0.43
6	2.800 but less than 2.850	0.44
7	2.750 but less than 2.800	0.45
8	2.700 but less than 2.750	0.46
9	2.650 but less than 2.700	0.47
10	2.600 but less than 2.650	0.48
11	2.550 but less than 2.600	0.49
12	2.500 but less than 2.550	0.50
13	2.450 but less than 2.500	0.51
14	2.400 but less than 2.450	0.52
15	2.350 but less than 2.400	0.53
16	2.300 but less than 2.350	0.54
17	2.250 but less than 2.300	0.55
18	2.200 but less than 2.250	0.56
19	2.150 but less than 2.200	0.57
20	2.100 but less than 2.150	0.58
21	2.050 but less than 2.100	0.59
22	2.000 but less than 2.050	0.60
23	1.975 but less than 2.000	0.61
24	1.950 but less than 1.975	0.62
25	1.925 but less than 1.950	0.63
26	1.900 but less than 1.925	0.64
27	1.875 but less than 1.900	0.65
28	1.850 but less than 1.875	0.66
29	1.825 but less than 1.850	0.67
30	1.800 but less than 1.825	0.68
31	1.775 but less than 1.800	0.69
32	1.750 but less than 1.775	0.70
33	1.725 but less than 1.750	0.71
34	1.700 but less than 1.725	0.72
35	1.675 but less than 1.700	0.73
36	1.650 but less than 1.675	0.74
37	1.625 but less than 1.650	0.75
38	1.600 but less than 1.625	0.76
39	1.575 but less than 1.600	0.77
40	1.550 but less than 1.575	0.78
41	1.525 but less than 1.550	0.79
42	1.500 but less than 1.525	0.80
43	1.475 but less than 1.500	0.81

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

30 (B) *Adjustment to taxable wages.* The planned yield as a percent of  
 31 total wages, as determined in this subsection (a)(3), shall be adjusted to  
 32 taxable wages by multiplying by the ratio of total wages to taxable wages  
 33 for all contributing employers for the preceding fiscal year ending June  
 34 30, ~~except, with regard to a year in which the taxable wage base changes.~~  
 35 ~~The taxable wages used in the calculation for such a year and the following~~  
 36 ~~year shall be an estimate of what the taxable wages would have been if~~  
 37 ~~the new taxable wage base had been in effect during all of the preceding~~  
 38 ~~fiscal year ending June 30. Any revenue generated by increasing the tax-~~  
 39 ~~able wage base above \$8,000 shall be in addition to the planned yield~~  
 40 ~~established pursuant to schedule III of this section.~~

41 (C) *Effective rates.* (i) Except with regard to rates for negative ac-  
 42 count balance employers, employer contribution rates to be effective for  
 43 the ensuing calendar year shall be computed by adjusting proportionately

1 the experience factors from schedule I of this section to the required  
2 yield on taxable wages. For the purposes of this subsection (a)(3), all rates  
3 computed shall be rounded to the nearest .01% and for calendar year  
4 1983 and ensuing calendar years, the maximum effective contribution rate  
5 shall not exceed 5.4%.

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

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

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

30 (b) *Successor classification.* (1) (A) For the purposes of this subsec-  
31 tion (b), whenever an employing unit, whether or not it is an "employing  
32 unit" within the meaning of subsection (g) of K.S.A. 44-703, and amend-  
33 ments thereto, becomes an employer pursuant to subsection (h)(4) of  
34 K.S.A. 44-703, and amendments thereto, or is an employer at the time  
35 of acquisition and meets the definition of a "successor employer" as de-  
36 fined by subsection (dd) of K.S.A. 44-703, and amendments thereto, and  
37 thereafter transfers its trade or business, or any portion thereof, to an-  
38 other employer and, at the time of the transfer, there is substantially  
39 common ownership, management or control of the two employers, then  
40 the unemployment experience attributable to the transferred trade or  
41 business shall be transferred to the employer to whom such business is  
42 so transferred. These experience factors consist of all contributions paid,  
43 benefit experience and annual payrolls of the predecessor employer. The

1 transfer of some or all of an employer's workforce to another employer  
2 shall be considered a transfer of trade or business when, as the result of  
3 such transfer, the transferring employer no longer performs trade or busi-  
4 ness with respect to the transferred workforce, and such trade or business  
5 is performed by the employer to whom the workforce is transferred.

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

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

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

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

35 (B) If a successor employer is determined to be qualified under par-  
36 agraph (2) or (3) of this subsection to receive the experience rating factors  
37 of the predecessor employer, the rate assigned to the successor employer  
38 for the remainder of the contributions year shall be determined by the  
39 following:

40 (i) If the acquiring employing unit was an employer subject to this  
41 act prior to the date of the transfer, the rate of contribution shall be the  
42 same as the contribution rate of the acquiring employer on the date of  
43 the transfer.

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

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

23 (6) Whenever an employer’s account has been terminated as provid-  
24 ed in subsections (d) and (e) of K.S.A. 44-711, and amendments  
25 thereto, and the employer continues with employment to liquidate the  
26 business operations, that employer shall continue to be an “employer”  
27 subject to the employment security law as provided in subsection (h)(8)  
28 of K.S.A. 44-703 and amendments thereto. The rate of contribution from  
29 the date of transfer to the end of the then current calendar year shall be  
30 the same as the contribution rate prior to the date of the transfer. At the  
31 completion of the then current calendar year, the rate of contribution  
32 shall be that of a “new employer” as described in subsection (a)(1) of this  
33 section.

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

41 (c) *Voluntary contributions.* Notwithstanding any other provision of  
42 the employment security law, any employer may make voluntary pay-  
43 ments for the purpose of reducing or maintaining a reduced rate in ad-

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

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

26 (e) The secretary of labor shall annually prepare and submit a certi-  
27 fication as to the solvency and adequacy of the amount credited to the  
28 state of Kansas' account in the federal employment security trust fund to  
29 the governor and the employment security advisory council. The certifi-  
30 cation shall be submitted on or before December 1 of each calendar year  
31 and shall be for the 12-month period ending on June 30 of that calendar  
32 year. In arriving at the certification contributions paid on or before July  
33 31 following the 12-month period ending date of June 30 shall be con-  
34 sidered. Each certification shall be used to determine the need for any  
35 adjustment to schedule III in subsection (a)(3)(A) and to assist in pre-  
36 paring legislation to accomplish any such adjustment.

37 Sec. 4. K.S.A. 2009 Supp. 44-703, 44-704 and 44-710a are hereby  
38 repealed.

39 Sec. 5. This act shall take effect and be in force from and after its  
40 publication in the statute book.