

SESSION OF 2021

**SUPPLEMENTAL NOTE ON SUBSTITUTE FOR HOUSE
BILL NO. 2196**

As Amended by House Committee of the Whole

Brief*

Sub. for HB 2196, as amended, would create the Unemployment Compensation Modernization and Improvement Council; require the Kansas Department of Labor (KDOL) to modernize its information technology (IT) infrastructure; make temporary changes to the membership of the Employment Security Review Board; make changes to Employment Security Rates tables; require the Secretary of Labor to provide tax notifications and certain Employment Security Fund Data Reporting; provide for certain employer account protections; provide for transfers of federal coronavirus relief aid or State General Fund moneys to the Employment Security Fund; prohibit the continuation of federal unemployment compensation programs using state funds; adjust thresholds for maximum benefits; modify the shared work program; and make other employment security compensation changes. The bill also would make technical changes.

The bill would be in effect upon publication in the *Kansas Register*.

***Unemployment Compensation Modernization and
Improvement Council***

The bill would create the Unemployment Compensation Modernization and Improvement Council (Council), which would consist of 13 members.

*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <http://www.kslegislature.org>

Non-legislative members would be:

- Three representatives of employers, one each selected by the Governor, the President of the Senate, and the Speaker of the House;
- Three representatives of employees, one each selected by the Governor, the President of the Senate, and the Speaker of the House; and
- The Secretary of Labor or their designee with a role in the administration of the Unemployment Insurance (UI) system.

Non-legislative members would serve a term of the shorter of three years or until the dissolution of the Council.

Legislative members would be appointed as follows:

- As appointed by the President of the Senate:
 - One Senate member from the majority party; and
 - The chairperson of the Senate committee to which UI legislation is typically referred;
- As appointed by the Speaker of the House:
 - One House member from the majority party; and
 - The chairperson of the House committee to which UI legislation is typically referred;
- One minority party Senate member, appointed by the Senate Minority Leader; and
- One minority party House member, appointed by the House Minority Leader.

Legislative members of the Council would serve during the session in which they are appointed, and could retain membership while remaining members of the Legislature.

Council vacancies would be filled in the same way as original appointments, to last for the remainder of the term of the member being replaced. Members of the Council would be entitled to compensation for service and for any necessary expenses incurred, to be paid from the Employment Security Administration Fund.

Operation of the Council

The bill would require the following to be part of the operation of the Council:

- Members would be appointed within 30 days of the effective date of the bill;
- The first meeting would be held within 30 days of the effective date of the bill;
- The chairperson of the Council would alternate at two-year intervals between the chairpersons of the House and Senate standing committees to which employment security legislation is typically referred, beginning with the chairperson of the House;
- The Secretary of Labor would appoint an executive secretary of the Council to:
 - Plan and provide agendas for meetings and conferences;
 - Keep minutes;
 - Manage phone calls, electronic correspondence, documents, records, and travel arrangements; and

- Prepare research, reports, or presentations as directed by the Council Chairperson; and
- The Council would be able to suggest to the Secretary of Labor rules and regulations necessary to carry out its function.

Role of the Council

The bill would require the Council to:

- Examine and recommend changes to the UI system;
- Examine the claim-filing and benefit disbursement process, and any future changes thereto;
- Examine and recommend changes on topics including but not limited to:
 - Technological infrastructure;
 - Improvements to system responsiveness, integrity, security, and data verification;
 - Methods of information sharing; and
 - Improvement of user experience across KDOL programs;
- Conduct an audit of the UI system, with a preliminary report by May 1, 2022, and a final report by September 1, 2022:
 - Examining the effects of fraudulent claims and improper payments from March 15, 2020, through March 31, 2022, and the response by KDOL to such claims;
 - Examining the amounts and nature of such claims, fraud processes and methods, and the potential for recovery of fraudulent payments; and

- Evaluating the likelihood of a data breach contributing to fraud and improper network architecture allowing a potential breach to have occurred;
- Issue an initial report within 90 days of the Council's first meeting describing the state of the process by which individuals file UI claims and receive UI benefits; and
- In coordination with the Secretary of Labor:
 - Develop a strategic staffing plan to address substantial changes in numbers of claims, including the prospective use and sources of additional employees;
 - Publish all points of contact for UI inquiries or claims to KDOL's website;
 - Recommend for adoption rules and regulations for creating a uniform UI complaint submission process; and
 - Adopt and periodically review a definition of "substantial disruption" in the benefit application and determination process.

The Secretary of Labor would have additional responsibilities related to the Council:

- Post all materials from Council meetings on a public website maintained by the Secretary;
- Develop the initial written strategic staffing plan no later than nine months after the first meeting of the Council, review it annually, and revise it as necessary. After each review, the most recent version would be provided to the Council and published on a public website maintained by the Secretary;

- Notify the Council Chairperson of any unauthorized third-party access or acquisition of records within five days of becoming aware of such an event; and
- Notify the Council members of any substantial disruption in the benefit application and determination process.

The Council would not be permitted to examine the solvency of the Unemployment Compensation Fund (*cf.* KSA 2020 Supp. 44-710a).

The Council would dissolve and all provisions related to the Council would be of no effect three years after the date of its first meeting.

KDOL Information Technology Modernization

As a supplement to the Employment Security Law, the bill would establish as the intent of the Legislature that KDOL's IT system be continually developed, customized, enhanced, and upgraded, in order to collect State employment security taxes, process UI claims, and pay UI benefits. To this end, the bill would require KDOL to fully design, implement, and administer a new UI system no later than December 31, 2022.

As established by the Council in consultation with the Secretary of Labor, the new system would be required to include, but not be limited to, certain components and features, as specified by the bill:

- System and platform technology components;
- Benefit claims and payment management features;
- Integrated tax management functionality;
- Tax performance system features; and

- Automated Work Opportunity Tax Credit eligibility determination.

The Secretary of Labor would be required to implement all program integrity elements and guidance from the U.S. Department of Labor (USDOL) and the National Association of State Workforce Agencies within 60 days of issuance. The bill would specifically direct the Secretary to implement elements including, but not limited to the following:

- Cross-matching social security numbers with the Social Security Administration;
- Checking new hire records against the National Directory of New Hires;
- Verification of citizenship or immigration status through the Systematic Alien Verification for Entitlements program;
- Comparison of applicant information with local, state, and federal prison databases;
- Use of the following to detect duplicate claims:
 - Interstate Connection Network;
 - Interstate Benefits Cross-Match;
 - State Identification Inquiry State Claims and Overpayment File; and
 - Interstate Benefits 8606 application for overpayment recoveries for claims filed in other states;
- Identification of IP addresses linked with multiple claims or claims filed outside the United States; and
- Use of data mining and analytics for fraud detection and prevention.

The bill would require the cross-checks described above to be carried out for new and active UI claims on a scheduled basis. Individual cases would be reviewed for any claimants approved for benefits for whom changes of circumstances affecting eligibility are identified.

The bill would authorize KDOL to execute a Memorandum of Understanding with any state department, agency, or agency division for information required to be shared by the bill.

The Secretary of Labor would be required to adopt rules and regulations to carry out the provisions of the bill within 12 months of the effective date of the bill, and to provide an annual status update and progress report to the Council.

Employment Security Board of Review Temporary Changes

The bill would provide that from the effective date of the bill to June 30, 2024, the Employment Security Board of Review (Board), currently composed of three members, will consist of six members, with no more than four of the members belonging to the same political party rather than two as in current law.

The bill would provide that the Board may sit in panels of three members with no more than two members belonging to the same political party, for the purpose of hearing and deciding cases before the Board.

The bill would provide that a member's appointment specifically for the term of the effective date of the bill through June 30, 2024, will not count as a term for purposes of the prohibition currently preventing a Board member from serving more than two consecutive terms.

Employment Security Rate Tables Changes

The bill would provide for new tables for solvency and credit adjustments for the purpose of making solvency or credit adjustments to maintain the Employment Security Fund balance beginning in rate year 2022.

The bill would replace the current uniform solvency rate adjustments to the standard rate schedule with six new solvency rate schedules and six new credit rate schedules providing for solvency and credit rating adjustments to be made according the experience rating of employers.

Tax Notification

The bill would require the Secretary of Labor to inform a claimant of the federal and state tax consequences related to UI benefits on the initial determination of benefits notice. Explanations of the following would be required:

- KDOL income tax withholding agreement form K-BEN 233, or a successor form;
- Tax withholding elections; and
- The tax withholding process and estimated weekly and maximum withholding amounts.

Unemployment Trust Fund Data Reporting

The bill would require the Secretary of Labor to publish certain data related to the UI Trust Fund on a publicly accessible website maintained by the Secretary.

The bill would require the following information to be maintained for the most recent 20 fiscal years, first published within 90 days of the effective date of the bill, and, for each fiscal year beginning in FY 2022, published within 120 days of the FY closing date:

- Distributions of taxable wages by experience factor for each fiscal year, to include:
 - The rate group;
 - The reserve ratio lower limit;
 - The number of accounts;
 - Taxable wages; and
 - Summaries including the number of accounts and FY taxable wages for active positive eligible, active ineligible, and active negative accounts;
- The average high-cost benefit rate summary, to include:
 - The average high-cost benefit rate in effect at that time, and
 - The benefit cost rate for fiscal years used to compute the average.

The Secretary of Labor would be required, for the three years following the effective date of the bill, to annually provide projections of the number and amount of UI claims, the UI Trust Fund balance, and the amount of employer premiums to be paid, to the House Committee on Commerce, Labor and Economic Development and the Senate Committee on Commerce.

Reemployment and Work Skills Training Services Provisions

The bill would require the Secretary of Labor and the Secretary of Commerce to jointly establish and implement programs providing reemployment and work skills training services to UI benefit recipients.

The bill would require the Secretary of Labor to request a UI claimant's resume and job search plan or similar information and provide, upon request, assistance to

claimants in developing such documents. The Secretary of Labor would be required to share labor market and job availability information and facilitate and monitor claimant and employer interview processes, including the results of job matches, and determine if a claimant has failed to meet work search requirements if a claimant did not attend an interview or did not accept an offered position.

The bill would require the secretaries of Labor and Commerce to jointly implement a work skills training or retraining program in collaboration with Kansas employers and other appropriate organizations, utilizing any available federal funding. Participation in such program by UI claimants for at least 25 hours per week would be deemed to have satisfied UI work search requirements.

UI claimants that fail to participate in reemployment and work skills training programs after having been requested to do so by the Secretary of Labor would be disqualified from receiving UI benefits until they demonstrate compliance. The bill would permit benefits to be continued or reinstated upon a showing of good cause by the claimant for failure to participate.

The Secretary of Labor would be required to annually report on the status and progress of the reemployment services and work skills training programs to the House Committee on Commerce, Labor and Economic Development and the Senate Committee on Commerce during the first month of each Legislative Session.

Work Refusal Provisions

The bill would require the Secretary of Labor to develop procedures enabling employers to notify KDOL when a UI claimant refuses to return to work or refuses an offer of employment. Upon receipt of such a notification, the Secretary would be required to determine if the offered employment is suitable, considering if the wages offered are

comparable to the claimant's recent employment, work duties correspond to the claimant's education level and work experience, and the wages offered are at least the amount of the claimant's maximum weekly UI benefits.

The Secretary would be required, within ten days of receiving work refusal notification from an employer, to notify the claimant who refused work information including:

- A summary of the claimant's duties to accept suitable work;
- A statement that the claimant has been or may be disqualified from receiving benefits;
- An explanation of what constitutes suitable work; and
- Instructions for contesting a denial of claim based upon a report by an employer that the claimant has refused an offer of suitable work.

Unemployment Rate Thresholds for Maximum Benefits

The bill would raise the minimum threshold for receiving a maximum of 20 weeks of UI benefits from a 3-month seasonally adjusted average unemployment rate of 4.5 percent to a rate of 5.0 percent for weeks beginning April 1, 2021.

Benefits Disqualification for Fraudulent or Misleading Statements

The bill would shorten the time an individual is to be disqualified from receiving benefits for fraudulent or misleading statements from five years to two years for a first occurrence and add a lifetime disqualification for a second occurrence.

Employer Account Protections and Payment Certification

The bill would require employers to be held harmless and not owe any amount to the State for:

- Any paid claim reported as fraudulent to the Secretary of Labor, unless the Secretary determines the claim to be legitimate; and
- Any claim that has been improperly paid, as would be defined by the bill, and is described below.

The bill would require the Secretary of Labor to make immediate restitution to employers, without requiring a hearing or a request from the employer, as follows:

- Credit the account of any contributing, governmental rated, or reimbursing employer for paid benefits determined to be due to fraud or improper payment;
- Refund “reimbursing employers,” who repay the State for claims paid on their behalf, for any claim paid after March 15, 2020, that is or is reported to be fraudulent by the employer, unless it is determined to be otherwise by the Secretary; and
- After reviewing all reimbursing employer accounts, apply credits for any unrecovered charges for fraudulent or erroneously paid claims.

For purposes of both restitution and indemnification:

- Any determination with respect to the legitimacy of a claim would be subject to appeal; and
- There would be no time limit for disputing a fraudulent claim or related appeals for benefits paid between March 15, 2020, and December 31, 2022.

For the purposes of the bill, “improper payments” would be defined as any payment that, according to legally applicable requirements, should not have been made or was in the incorrect amount.

The bill would require the Secretary of Labor to review all information reported by the USDOL regarding improper payments between March 15, 2020, and December 31, 2022, and to:

- Determine the amount of any improper payments within 60 days of such information becoming available;
- Immediately certify such amounts to the Director of Accounts and Reports; and
- Upon certification, send copies of each certification to the Director of the Budget and the Director of Legislative Research.

Federal Coronavirus Relief Aid and State General Fund Transfers

The bill would provide for the lesser of an aggregate of \$450.0 million or the maximum amount available, as determined by the Director of the Budget, to be transferred from special revenue funds to the Employment Security Fund during FY 2021 and FY 2022. The transfer would be made up of moneys identified by the Director of the Budget to be unencumbered coronavirus relief funds that may be spent at the discretion of the State and provided by federal legislation enacted in response to the COVID-19 pandemic.

In the event the full \$450.0 million transfer of federal coronavirus relief funds to the Employment Security Fund is not made, the bill would stipulate contributing employers would pay contributions as set forth in the standard rate

schedule for rate year 2022, and no solvency credit or adjustment would apply.

In the event the full \$450.0 million transfer of federal coronavirus relief funds to the Employment Security Fund is not made, the Director of Accounts and Reports, upon receiving the certification regarding the amount of fraudulent and improper payments, would be required to immediately transfer an amount equal to the improper payment to the Unemployment Insurance Trust Fund from either:

- The State General Fund; or
- Another fund in the State Treasury as deemed appropriate and authorized by the Governor, with the approval of the State Finance Council.

In the event the Secretary of Labor determines the full amount of fraudulent and improper payments from the period of March 15, 2020, through December 21, 2022, has not been transferred to the Employment Security Fund from either federal coronavirus relief funds or the State General Fund, the Secretary would be required to certify the amount of such shortfall, which would then be transferred from the State General Fund to the Employment Security Fund in five equal installments on or before July 15 of FY 2024 through FY 2028. The Governor would be permitted to direct that these transfers come from different funds within the State Treasury with approval from the State Finance Council.

In the event the Secretary of Labor determines the full amount of fraudulent and improper payments from the period of March 15, 2020, through December 21, 2022, was less than the amount transferred from the State General Fund to the Employment Security Fund, an amount equal to the difference between the transfer and the amount of fraudulent and improper payments would be made from the Employment Security Fund to the State General Fund and designated for use for COVID-19 related purposes, as provided by acts of the Legislature.

The bill would provide for any amount of improper payment recovered by the Secretary of Labor to be deposited in the State General Fund.

Federal UI Program Restrictions

The bill would specify that any federal UI program established in response to a pandemic is not to be continued using state contributions after the the federal program ends.

Shared Work Program Modifications

The bill would require the Secretary of Labor to create and manage a promotional campaign for the Shared Work Unemployment Compensation Program (Program), which would include educational communications with other state agencies and stakeholders, including the Governor's office, legislators, workforce investment boards, labor unions, and local, regional, or state chambers of commerce.

The eligibility of employees to participate in the program would be expanded from those whose hours of work are reduced by 20 to 40 percent of normal weekly hours to those whose hours of work are reduced by 10 to 50 percent of normal weekly hours.

The bill would permit negative account employers to be approved for the Program if their most recent calculated reserve ratio has improved from the previous reporting year's reserve ratio.

The bill would clarify that eligibility for UI benefits pursuant to a Program agreement would not be conditioned upon work search or work availability limitations otherwise generally required of UI benefit recipients.

Other Provisions

The bill would amend a provision of the Employment Security Law pertaining to the quarterly reporting of tax and wage data. Under current law, professional employer organizations, or independent businesses that provide leased employees to a client, are prohibited from including a client company's owners and officers in the same UI quarterly report as that company's employees. The bill would remove the prohibition.

The bill would revise the Employment Security Law by excluding from the definition of "employment" contractual services performed by a petroleum landman. Such services would be defined to include mineral rights management and negotiations, development of minerals, research of public and private property records, and title work. For purposes of the bill, "minerals" would include oil, natural gas, or petroleum. Such services would not include services performed for 501(c)(3) organizations exempt from federal income taxation.

The bill would require KDOL and the Department for Children and Families (DCF) to enter into a memorandum of understanding to provide for the transfer of information between agencies providing that, upon notification that a UI claimant has become employed, the Secretary of Labor shall notify DCF to determine the UI claimant's eligibility for state or federal benefits provided or facilitated by DCF.

The bill would provide that if the contributions collected from negative account balance employers and paid into the Employment Security Interest Assessment Fund for the purpose of paying interest on unemployment advances provided by the federal government exceed the amount of interest owed, any excess amount shall be transferred to the Employment Security Trust Fund. The bill would prohibit any expenditures other than the payment of principal and interest on such advances from the federal government.

Background

The bill was introduced by the House Committee on Commerce, Labor and Economic Development at the request of a representative of the Kansas Society for Human Resource Management.

House Committee on Commerce, Labor and Economic Development

The House Committee hearing was conducted over the course of three days. **Proponent** testimony was provided on February 9, 2021, by representatives of the Kansas Chamber of Commerce, the Kansas Society for Human Resource Management, the National Association of Professional Employer Organizations, Opportunity Solutions Project, the Overland Park Chamber of Commerce, and the Wichita Regional Chamber of Commerce. Proponents noted problems with unemployment insurance need to be addressed immediately, the unemployment system needs to be modernized, and employers need to be protected from detrimental effects of rampant unemployment fraud.

On February 10, 2021, representatives of KDOL provided neutral testimony on the bill. The conferees noted that some modernizations need to be implemented, but a number of provisions as written would be impractical for the Department to implement.

There was no other testimony.

The House Committee adopted a number of amendments to the bill before recommending a substitute bill be created and recommended favorably for passage. The amendments included:

- Changing the effective date of the bill to be upon publication in the *Kansas Register*;

- Changing deadlines for the adoption of rules and regulations, the release of the initial report of the Council, and posting of UI trust fund information by KDOL;
- Adding language to make the technology and feature specifications lists in IT modernization portions of the bill non-exhaustive;
- Adding “automated Work Opportunity Tax Credit eligibility determination” to the list of tax performance system features;
- Clarifying language restricting restitution to apply to fraudulent or improperly paid claims;
- Providing for an audit of the UI system to be conducted by the Council;
- Temporarily increasing the membership of the Employment Security Board of Review;
- Adding provisions related to reemployment planning, work search services, and work refusal notification procedures;
- Adding a provision requiring a memorandum of understanding for data sharing related to cross-checking between KDOL and DCF;
- Modifying changes to the shared work program;
- Making a technical change to the provision related to petroleum landmen;
- Eliminating a provision requiring a 20-year look-back period for fraudulent charges waivers;
- Requiring three years of annual estimates of UI claims, premiums, and trust fund balances; and

- Providing for transfers of federal coronavirus relief aid to the Employment Security Fund and modifying provisions related to transfers from the State General Fund.

House Committee of the Whole

The House Committee of the Whole amended the bill to:

- Restructure Council membership, modify appointment procedure, and add a deadline for the initial meeting;
- Remove the provision that would eliminate the Employment Security Interest Assessment Fund, and modify current language providing therefor;
- Modify disqualification periods for UI benefits for fraudulent or misleading statements;
- Include labor unions as participants to be engaged by the shared work program promotional campaign outlined above; and
- Make technical changes to the bill.

[*Note:* The provisions for restructuring Council membership were part of an amendment adopted by the House Committee on Commerce, Labor and Economic Development that was not included in the Committee Report adopted by the House.]

Fiscal Information

According to the fiscal note prepared by the Division of the Budget on the bill as introduced, KDOL estimates modernizing the UI IT system would cost \$46.7 million from all funds and the bill would require \$688,660 and 9.0 FTE positions to staff the Council, perform fraud research, and serve the revised shared work program.

KDOL also notes it is unable to estimate the total amount of fraudulent and improper payments and is unable to estimate the amount of transfers to or from the State General Fund.

Of the total total fiscal effect of the bill, approximately \$37.0 million for UI IT modernization is included in *The FY 2022 Governor's Budget Report*. Other provisions of the bill are not reflected in the Governor's budget.

Unemployment Compensation; state finances; modernization; benefits; fraud protection; shared work program