

HOUSE BILL No. 2705

By Committee on Commerce, Labor and Economic Development

2-14

1 AN ACT concerning employment security law; relating to employers and
2 employees subject to the law; petroleum landmen; amending K.S.A.
3 2019 Supp. 44-703 and repealing the existing section.
4

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

6 Section 1. K.S.A. 2019 Supp. 44-703 is hereby amended to read as
7 follows: 44-703. As used in this act, unless the context clearly requires
8 otherwise:

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

11 (2) "Average annual payroll" means the average of the annual
12 payrolls of any employer for the last three calendar years immediately
13 preceding the computation date as hereinafter defined if the employer has
14 been continuously subject to contributions during those three calendar
15 years and has paid some wages for employment during each of such years.
16 In determining contribution rates for the calendar year, if an employer has
17 not been continuously subject to contribution for the three calendar years
18 immediately preceding the computation date but has paid wages subject to
19 contributions during only the two calendar years immediately preceding
20 the computation date, such employer's "average annual payroll" shall be
21 the average of the payrolls for those two calendar years.

22 (3) "Total wages" means the total amount of wages paid or payable
23 by an employer during the calendar year, including that part of
24 remuneration in excess of the limitation prescribed as provided in
25 subsection (o)(1) of this section.

26 (b) "Base period" means the first four of the last five completed
27 calendar quarters immediately preceding the first day of an individual's
28 benefit year, except that the base period in respect to combined wage
29 claims means the base period as defined in the law of the paying state.

30 (1) If an individual lacks sufficient base period wages in order to
31 establish a benefit year in the manner set forth above and satisfies the
32 requirements of ~~subsection (g)~~ of K.S.A. 44-705(g) and ~~subsection (hh)~~ of
33 K.S.A. 44-703(hh), and amendments thereto, the claimant shall have an
34 alternative base period substituted for the current base period so as not to
35 prevent establishment of a valid claim. For the purposes of this subsection,
36 "alternative base period" means the last four completed quarters

1 immediately preceding the date the qualifying injury occurred. In the event
2 the wages in the alternative base period have been used on a prior claim,
3 then they shall be excluded from the new alternative base period.

4 (2) For the purposes of this chapter, the term "base period" includes
5 the alternative base period.

6 (c) (1) "Benefits" means the money payments payable to an
7 individual, as provided in this act, with respect to such individual's
8 unemployment.

9 (2) "Regular benefits" means benefits payable to an individual under
10 this act or under any other state law, including benefits payable to federal
11 civilian employees and to ex-servicemen pursuant to 5 U.S.C. chapter 85,
12 other than extended benefits.

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

32 (e) "Commissioner" or "secretary" means the secretary of labor.

33 (f) (1) "Contributions" means the money payments to the state
34 employment security fund ~~which~~ that are required to be made by
35 employers on account of employment under K.S.A. 44-710, and
36 amendments thereto, and voluntary payments made by employers pursuant
37 to such statute.

38 (2) "Payments in lieu of contributions" means the money payments to
39 the state employment security fund from employers ~~which~~ that are
40 required to make or ~~which~~ that elect to make such payments under
41 ~~subsection (e)~~ of K.S.A. 44-710(e), and amendments thereto.

42 (g) "Employing unit" means any individual or type of organization,
43 including any partnership, association, limited liability company, agency

1 or department of the state of Kansas and political subdivisions thereof,
2 trust, estate, joint-stock company, insurance company or corporation,
3 whether domestic or foreign including nonprofit corporations, or the
4 receiver, trustee in bankruptcy, trustee or successor thereof, or the legal
5 representatives of a deceased person, ~~which~~ *that* has in its employ one or
6 more individuals performing services for it within this state. All
7 individuals performing services within this state for any employing unit
8 ~~which~~ *that* maintains two or more separate establishments within this state
9 shall be deemed to be employed by a single employing unit for all the
10 purposes of this act. Each individual employed to perform or to assist in
11 performing the work of any agent or employee of an employing unit shall
12 be deemed to be employed by such employing unit for all the purposes of
13 this act, whether such individual was hired or paid directly by such
14 employing unit or by such agent or employee, provided the employing unit
15 had actual or constructive knowledge of the employment.

16 (h) "Employer" means:

17 (1) (A) Any employing unit for which agricultural labor as defined in
18 subsection (w) ~~of this section~~ is performed and ~~which~~ during any calendar
19 quarter in either the current or preceding calendar year paid remuneration
20 in cash of \$20,000 or more to individuals employed in agricultural labor or
21 for some portion of a day in each of 20 different calendar weeks, whether
22 or not such weeks were consecutive, in either the current or the preceding
23 calendar year, employed in agricultural labor 10 or more individuals,
24 regardless of whether they were employed at the same moment of time.

25 (B) For the purpose of this subsection (h)(1), any individual who is a
26 member of a crew furnished by a crew leader to perform service in
27 agricultural labor for any other person shall be treated as an employee of
28 such crew leader if:

29 (i) Such crew leader holds a valid certificate of registration under the
30 federal migrant and seasonal agricultural workers protection act or
31 substantially all the members of such crew operate or maintain tractors,
32 mechanized harvesting or cropdusting equipment or any other mechanized
33 equipment, ~~which~~ *that* is provided by such crew leader; and

34 (ii) such individual is not in the employment of such other person
35 within the meaning of subsection (i) of this section.

36 (C) For the purpose of this subsection (h)(1), in the case of any
37 individual who is furnished by a crew leader to perform service in
38 agricultural labor for any other person and who is not treated as an
39 employee of such crew leader:

40 (i) Such other person and not the crew leader shall be treated as the
41 employer of such individual; and

42 (ii) such other person shall be treated as having paid cash
43 remuneration to such individual in an amount equal to the amount of cash

1 remuneration paid to such individual by the crew leader, either on the crew
 2 leader's own behalf or on behalf of such other person, for the service in
 3 agricultural labor performed for such other person.

4 (D) For the purposes of this subsection (h)(1) "crew leader" means an
 5 individual who:

6 (i) Furnishes individuals to perform service in agricultural labor for
 7 any other person;

8 (ii) pays, either on such individual's own behalf or on behalf of such
 9 other person, the individuals so furnished by such individual for the
 10 service in agricultural labor performed by them; and

11 (iii) has not entered into a written agreement with such other person
 12 under which such individual is designated as an employee of such other
 13 person.

14 (2) (A) Any employing unit ~~which that~~ for calendar year 2007 and
 15 each calendar year thereafter: (i) In any calendar quarter in either the
 16 current or preceding calendar year paid for service in employment wages
 17 of \$1,500 or more; (ii) for some portion of a day in each of 20 different
 18 calendar weeks, whether or not such weeks were consecutive, in either the
 19 current or preceding calendar year, had in employment at least one
 20 individual, whether or not the same individual was in employment in each
 21 such day; or (iii) elects to have an unemployment tax account established
 22 at the time of initial registration in accordance with ~~subsection (e) of~~
 23 K.S.A. 44-711(c), and amendments thereto.

24 (B) Employment of individuals to perform domestic service or
 25 agricultural labor and wages paid for such service or labor shall not be
 26 considered in determining whether an employing unit meets the criteria of
 27 this subsection (h)(2).

28 (3) Any employing unit for which service is employment as defined
 29 in subsection (i)(3)(E) ~~of this section.~~

30 (4) (A) Any employing unit, whether or not it is an employing unit
 31 under subsection (g) ~~of this section, which that~~ acquires or in any manner
 32 succeeds to: (i) Substantially all of the employing enterprises,
 33 organization, trade or business; or (ii) substantially all the assets;
 34 of another employing unit ~~which that~~ at the time of such acquisition was an
 35 employer subject to this act;

36 (B) any employing unit ~~which that~~ is controlled substantially, either
 37 directly or indirectly by legally enforceable means or otherwise, by the
 38 same interest or interests, whether or not such interest or interests are an
 39 employing unit under subsection (g) ~~of this section, which~~ acquires or in
 40 any manner succeeds to a portion of an employer's annual payroll, ~~which~~ is
 41 less than 100% of such employer's annual payroll, and ~~which~~ intends to
 42 continue the acquired portion as a going business.

43 (5) Any employing unit ~~which that~~ paid cash remuneration of \$1,000

1 or more in any calendar quarter in the current or preceding calendar year to
2 individuals employed in domestic service as defined in subsection (aa) ~~of~~
3 ~~this section.~~

4 (6) Any employing unit ~~which that~~ having become an employer
5 under this subsection (h) has not, under ~~subsection (b) of~~ K.S.A. 44-
6 711(b), and amendments thereto, ceased to be an employer subject to this
7 act.

8 (7) Any employing unit ~~which that~~ has elected to become fully
9 subject to this act in accordance with ~~subsection (e) of~~ K.S.A. 44-711(c),
10 and amendments thereto.

11 (8) Any employing unit not an employer by reason of any other
12 paragraph of this subsection (h), for which within either the current or
13 preceding calendar year services in employment are or were performed
14 with respect to which such employing unit is liable for any federal tax
15 against which credit may be taken for contributions required to be paid
16 into a state unemployment compensation fund; or ~~which that~~, as a
17 condition for approval of this act for full tax credit against the tax imposed
18 by the federal unemployment tax act, is required, pursuant to such act, to
19 be an "employer" under this act.

20 (9) Any employing unit described in section 501(c)(3) of the federal
21 internal revenue code of 1986 ~~which that~~ is exempt from income tax under
22 section 501(a) of the code that had four or more individuals in
23 employment for some portion of a day in each of 20 different weeks,
24 whether or not such weeks were consecutive, within either the current or
25 preceding calendar year, regardless of whether they were employed at the
26 same moment of time.

27 (i) "Employment" means:

28 (1) Subject to the other provisions of this subsection, service,
29 including service in interstate commerce, performed by:

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

31 (B) any individual who, under the usual common law rules applicable
32 in determining the employer-employee relationship, has the status of an
33 employee subject to the provisions of subsection (i)(3)(D); or

34 (C) any individual other than an individual who is an employee under
35 subsection (i)(1)(A) or subsection (i)(1)(B) above who performs services
36 for remuneration for any person:

37 (i) As an agent-driver or commission-driver engaged in distributing
38 meat products, vegetable products, fruit products, bakery products,
39 beverages ~~}, other than milk~~, or laundry or dry-cleaning services, for such
40 individual's principal; or

41 (ii) as a traveling or city salesman, other than as an agent-driver or
42 commission-driver, engaged upon a full-time basis in the solicitation on
43 behalf of, and the transmission to, a principal ~~}, except for side-line sales~~

1 activities on behalf of some other person), of orders from wholesalers,
 2 retailers, contractors, or operators of hotels, restaurants, or other similar
 3 establishments for merchandise for resale or supplies for use in their
 4 business operations.

5 For purposes of subsection (i)(1)(C), the term "employment" shall
 6 include services described in paragraphs (i) and (ii) above only if:

7 (a) The contract of service contemplates that substantially all of the
 8 services are to be performed personally by such individual;

9 (b) the individual does not have a substantial investment in facilities
 10 used in connection with the performance of the services—~~or~~ other than in
 11 facilities for transportation}; and

12 (c) the services are not in the nature of a single transaction that is not
 13 part of a continuing relationship with the person for whom the services are
 14 performed.

15 (2) The term "employment" shall include an individual's entire
 16 service within the United States, even though performed entirely outside
 17 this state if:

18 (A) The service is not localized in any state;

19 (B) the individual is one of a class of employees who are required to
 20 travel outside this state in performance of their duties; and

21 (C) the individual's base of operations is in this state, or if there is no
 22 base of operations, then the place ~~from which~~ *where* service is directed or
 23 controlled is in this state.

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

25 (A) Services performed within this state but not covered by the
 26 provisions of subsection (i)(1) or subsection (i)(2) shall be deemed to be
 27 employment subject to this act if contributions are not required and paid
 28 with respect to such services under an unemployment compensation law of
 29 any other state or of the federal government.

30 (B) Services performed entirely without this state, with respect to no
 31 part of which contributions are required and paid under an unemployment
 32 compensation law of any other state or of the federal government, shall be
 33 deemed to be employment subject to this act only if the individual
 34 performing such services is a resident of this state and the secretary
 35 approved the election of the employing unit for whom such services are
 36 performed that the entire service of such individual shall be deemed to be
 37 employment subject to this act.

38 (C) Services covered by an arrangement pursuant to ~~subsection (1) of~~
 39 K.S.A. 44-714(l), and amendments thereto, between the secretary and the
 40 agency charged with the administration of any other state or federal
 41 unemployment compensation law, pursuant to which all services
 42 performed by an individual for an employing unit are deemed to be
 43 performed entirely within this state, shall be deemed to be employment if

1 the secretary has approved an election of the employing unit for whom
2 such services are performed, pursuant to which the entire service of such
3 individual during the period covered by such election is deemed to be
4 insured work.

5 (D) Services performed by an individual for wages or under any
6 contract of hire shall be deemed to be employment subject to this act if the
7 business for which activities of the individual are performed retains not
8 only the right to control the end result of the activities performed, but the
9 manner and means by which the end result is accomplished.

10 (E) Service performed by an individual in the employ of this state or
11 any instrumentality thereof, any political subdivision of this state or any
12 instrumentality thereof, or in the employ of an Indian tribe, as defined
13 pursuant to section 3306(u) of the federal unemployment tax act, any
14 instrumentality of more than one of the foregoing or any instrumentality
15 ~~which~~ *that* is jointly owned by this state or a political subdivision thereof
16 or Indian tribes and one or more other states or political subdivisions of
17 this or other states, provided that such service is excluded from
18 "employment" as defined in the federal unemployment tax act by reason of
19 section 3306(c)(7) of that act and is not excluded from "employment"
20 under subsection (i)(4)(A) of this section. For purposes of this section, the
21 exclusions from employment in subsections (i)(4)(A) and (i)(4)(L) shall
22 also be applicable to services performed in the employ of an Indian tribe.

23 (F) Service performed by an individual in the employ of a religious,
24 charitable, educational or other organization—~~which~~ *that* is excluded from
25 the term "employment" as defined in the federal unemployment tax act
26 solely by reason of section 3306(c)(8) of that act, and is not excluded from
27 employment under paragraphs (I) through (M) of subsection (i)(4).

28 (G) The term "employment" shall include the service of an individual
29 who is a citizen of the United States, performed outside the United States
30 except in Canada, in the employ of an American employer—~~,~~ other than
31 service—~~which~~ *that* is deemed "employment" under the provisions of
32 subsection (i)(2) or subsection (i)(3) or the parallel provisions of another
33 state's law), if:

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

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

37 (a) The employer is an individual who is a resident of this state;

38 (b) the employer is a corporation which is organized under the laws
39 of this state; or

40 (c) the employer is a partnership or a trust and the number of the
41 partners or trustees who are residents of this state is greater than the
42 number who are residents of any other state; or

43 (iii) none of the criteria of paragraphs (i) and (ii) above of this

1 subsection (i)(3)(G) are met but the employer has elected coverage in this
2 state or, the employer having failed to elect coverage in any state, the
3 individual has filed a claim for benefits, based on such service, under the
4 law of this state.

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

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

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

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

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

13 (I) Notwithstanding subsection (i)(2) of this section, all service
14 performed by an officer or member of the crew of an American vessel or
15 American aircraft on or in connection with such vessel or aircraft, if the
16 operating office, from which the operations of such vessel or aircraft
17 operating within, or within and without, the United States are ordinarily
18 and regularly supervised, managed, directed and controlled is within this
19 state.

20 (J) Notwithstanding any other provisions of this subsection (i),
21 service with respect to which a tax is required to be paid under any federal
22 law imposing a tax against which credit may be taken for contributions
23 required to be paid into a state unemployment compensation fund or ~~which~~
24 *that* as a condition for full tax credit against the tax imposed by the federal
25 unemployment tax act is required to be covered under this act.

26 (K) Domestic service in a private home, local college club or local
27 chapter of a college fraternity or sorority performed for a person who paid
28 cash remuneration of \$1,000 or more in any calendar quarter in the current
29 calendar year or the preceding calendar year to individuals employed in
30 such domestic service.

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

34 (i) As an elected official;

35 (ii) as a member of a legislative body, or a member of the judiciary, of
36 a state, political subdivision or of an Indian tribe;

37 (iii) as a member of the state national guard or air national guard;

38 (iv) as an employee serving on a temporary basis in case of fire,
39 storm, snow, earthquake, flood or similar emergency;

40 (v) in a position ~~which~~ *that*, under or pursuant to the laws of this state
41 or tribal law, is designated as a major nontenured policymaking or
42 advisory position or as a policymaking or advisory position the
43 performance of the duties of which ordinarily does not require more than

1 eight hours per week;

2 (B) service with respect to which unemployment compensation is
3 payable under an unemployment compensation system established by an
4 act of congress;

5 (C) service performed by an individual in the employ of such
6 individual's son, daughter or spouse, and service performed by a child
7 under the age of 21 years in the employ of such individual's father or
8 mother;

9 (D) service performed in the employ of the United States government
10 or an instrumentality of the United States exempt under the constitution of
11 the United States from the contributions imposed by this act, except that to
12 the extent that the congress of the United States shall permit states to
13 require any instrumentality of the United States to make payments into an
14 unemployment fund under a state unemployment compensation law, all of
15 the provisions of this act shall be applicable to such instrumentalities, and
16 to services performed for such instrumentalities, in the same manner, to the
17 same extent and on the same terms as to all other employers, employing
18 units, individuals and services. If this state shall not be certified for any
19 year by the federal security agency under section 3304(c) of the federal
20 internal revenue code of 1986, the payments required of such
21 instrumentalities with respect to such year shall be refunded by the
22 secretary from the fund in the same manner and within the same period as
23 is provided in ~~subsection (f)~~ of K.S.A. 44-717(f), and amendments thereto,
24 with respect to contributions erroneously collected;

25 (E) service covered by an arrangement between the secretary and the
26 agency charged with the administration of any other state or federal
27 unemployment compensation law pursuant to which all services performed
28 by an individual for an employing unit during the period covered by such
29 employing unit's duly approved election, are deemed to be performed
30 entirely within the jurisdiction of such other state or federal agency;

31 (F) service performed by an individual under the age of 18 in the
32 delivery or distribution of newspapers or shopping news, not including
33 delivery or distribution to any point for subsequent delivery or
34 distribution;

35 (G) service performed by an individual for an employing unit as an
36 insurance agent or as an insurance solicitor, if all such service performed
37 by such individual for such employing unit is performed for remuneration
38 solely by way of commission;

39 (H) service performed in any calendar quarter in the employ of any
40 organization exempt from income tax under section 501(a) of the federal
41 internal revenue code of 1986-~~), other than an organization described in~~
42 ~~section 401(a) or under section 521 of such code),~~ if the remuneration for
43 such service is less than \$50. In construing the application of the term

1 "employment," if services performed during $\frac{1}{2}$ or more of any pay period
2 by an individual for the person employing such individual constitute
3 employment, all the services of such individual for such period shall be
4 deemed to be employment; but if the services performed during more than
5 $\frac{1}{2}$ of any such pay period by an individual for the person employing such
6 individual do not constitute employment, then none of the services of such
7 individual for such period shall be deemed to be employment. As used in
8 this subsection (i)(4)(H) the term "pay period" means a period ~~(, of not~~
9 ~~more than 31 consecutive days)~~, for which a payment of remuneration is
10 ordinarily made to the individual by the person employing such individual.
11 This subsection (i)(4)(H) shall not be applicable with respect to services
12 with respect to which unemployment compensation is payable under an
13 unemployment compensation system established by an act of congress;

14 (I) services performed in the employ of a church or convention or
15 association of churches, or an organization which is operated primarily for
16 religious purposes and which is operated, supervised, controlled; or
17 principally supported by a church or convention or association of
18 churches;

19 (J) service performed by a duly ordained, commissioned, or licensed
20 minister of a church in the exercise of such individual's ministry or by a
21 member of a religious order in the exercise of duties required by such
22 order;

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

25 (i) Rehabilitation for individuals whose earning capacity is impaired
26 by age or physical or mental deficiency or injury; or

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

31 (L) service performed as part of an employment work-relief or work-
32 training program assisted or financed in whole or in part by any federal
33 agency or an agency of a state or political subdivision thereof or of an
34 Indian tribe, by an individual receiving such work relief or work training;

35 (M) service performed by an inmate of a custodial or correctional
36 institution;

37 (N) service performed, in the employ of a school, college, or
38 university, if such service is performed by a student who is enrolled and is
39 regularly attending classes at such school, college or university;

40 (O) service performed by an individual who is enrolled at a nonprofit
41 or public educational institution ~~which~~ *that* normally maintains a regular
42 faculty and curriculum and normally has a regularly organized body of
43 students in attendance at the place where its educational activities are

1 carried on as a student in a full-time program, taken for credit at such
2 institution,—~~which~~ *that* combines academic instruction with work
3 experience, if such service is an integral part of such program, and such
4 institution has so certified to the employer, except that this subsection (i)
5 (4)(O) shall not apply to service performed in a program established for or
6 on behalf of an employer or group of employers;

7 (P) service performed in the employ of a hospital licensed, certified
8 or approved by the secretary of health and environment, if such service is
9 performed by a patient of the hospital;

10 (Q) services performed as a qualified real estate agent. As used in this
11 subsection (i)(4)(Q) the term "qualified real estate agent" means any
12 individual who is licensed by the Kansas real estate commission as a
13 salesperson under the real estate brokers' and salespersons' license act and
14 for whom:

15 (i) Substantially all of the remuneration, whether or not paid in cash,
16 for the services performed by such individual as a real estate salesperson is
17 directly related to sales or other output, including the performance of
18 services, rather than to the number of hours worked; and

19 (ii) the services performed by the individual are performed pursuant
20 to a written contract between such individual and the person for whom the
21 services are performed and such contract provides that the individual will
22 not be treated as an employee with respect to such services for state tax
23 purposes;

24 (R) services performed for an employer by an extra in connection
25 with any phase of motion picture or television production or television
26 commercials for less than 14 days during any calendar year. As used in this
27 subsection, the term "extra" means an individual who pantomimes in the
28 background, adds atmosphere to the set and performs such actions without
29 speaking and "employer" shall not include any employer—~~which~~ *that* is a
30 governmental entity or any employer described in section 501(c)(3) of the
31 federal internal revenue code of 1986—~~which~~ *that* is exempt from income
32 taxation under section 501(a) of the code;

33 (S) services performed by an oil and gas contract pumper. As used in
34 this subsection (i)(4)(S), "oil and gas contract pumper" means a person
35 performing pumping and other services on one or more oil or gas leases, or
36 on both oil and gas leases, relating to the operation and maintenance of
37 such oil and gas leases, on a contractual basis for the operators of such oil
38 and gas leases and "services" shall not include services performed for a
39 governmental entity or any organization described in section 501(c)(3) of
40 the federal internal revenue code of 1986—~~which~~ *that* is exempt from
41 income taxation under section 501(a) of the code;

42 (T) service not in the course of the employer's trade or business
43 performed in any calendar quarter by an employee, unless the cash

1 remuneration paid for such service is \$200 or more and such service is
2 performed by an individual who is regularly employed by such employer
3 to perform such service. For purposes of this paragraph, an individual shall
4 be deemed to be regularly employed by an employer during a calendar
5 quarter only if:

6 (i) On each of some 24 days during such quarter such individual
7 performs for such employer for some portion of the day service not in the
8 course of the employer's trade or business; or

9 (ii) such individual was regularly employed, as determined under
10 subparagraph (i), by such employer in the performance of such service
11 during the preceding calendar quarter.

12 Such excluded service shall not include any services performed for an
13 employer ~~which~~ that is a governmental entity or any employer described in
14 section 501(c)(3) of the federal internal revenue code of 1986 ~~which~~ that is
15 exempt from income taxation under section 501(a) of the code;

16 (U) service which is performed by any person who is a member of a
17 limited liability company and ~~which~~ that is performed as a member or
18 manager of that limited liability company; and

19 (V) services performed as a qualified direct seller. The term "direct
20 seller" means any person if:

21 (i) Such person:

22 (a) Is engaged in the trade or business of selling or soliciting the sale
23 of consumer products to any buyer on a buy-sell basis or a deposit-
24 commission basis for resale, by the buyer or any other person, in the home
25 or otherwise rather than in a permanent retail establishment; or

26 (b) is engaged in the trade or business of selling or soliciting the sale
27 of consumer products in the home or otherwise than in a permanent retail
28 establishment;

29 (ii) substantially all the remuneration whether or not paid in cash for
30 the performance of the services described in subparagraph (i) is directly
31 related to sales or other output including the performance of services rather
32 than to the number of hours worked;

33 (iii) the services performed by the person are performed pursuant to a
34 written contract between such person and the person for whom the services
35 are performed and such contract provides that the person will not be
36 treated as an employee for federal and state tax purposes;

37 (iv) for purposes of this act, a sale or a sale resulting exclusively from
38 a solicitation made by telephone, mail, or other telecommunications
39 method, or other nonpersonal method does not satisfy the requirements of
40 this subsection;

41 (W) service performed as an election official or election worker, if the
42 amount of remuneration received by the individual during the calendar
43 year for services as an election official or election worker is less than

1 \$1,000;

2 (X) service performed by agricultural workers who are aliens
3 admitted to the United States to perform labor pursuant to section 1101 (a)
4 (15)(H)(ii)(a) of the immigration and nationality act; and

5 (Y) service performed by an owner-operator of a motor vehicle that is
6 leased or contracted to a licensed motor carrier with the services of a
7 driver and is not treated under the terms of the lease agreement or contract
8 with the licensed motor carrier as an employee for purposes of the federal
9 insurance contribution act, 26 U.S.C. § 3101 et seq., the federal social
10 security act, 42 U.S.C. § 301 et seq., the federal unemployment tax act, 26
11 U.S.C. § 3301 et seq., and the federal statutes prescribing income tax
12 withholding at the source, 26 U.S.C. § 3401 et seq. Employees or agents of
13 the owner-operator shall not be considered employees of the licensed
14 motor carrier for purposes of employment security taxation or
15 compensation. As used in this subsection (Y), the following definitions
16 apply: (i) "Motor vehicle" means any automobile, truck-trailer, semitrailer,
17 tractor, motor bus or any other self-propelled or motor-driven vehicle used
18 upon any of the public highways of Kansas for the purpose of transporting
19 persons or property; (ii) "licensed motor carrier" means any person, firm,
20 corporation or other business entity that holds a certificate of convenience
21 and necessity or a certificate of public service from the state corporation
22 commission or is required to register motor carrier equipment pursuant to
23 49 U.S.C. § 14504; and (iii) "owner-operator" means a person, firm,
24 corporation or other business entity that is the owner of a single motor
25 vehicle that is driven exclusively by the owner under a lease agreement or
26 contract with a licensed motor carrier.

27 (Z) *services performed by a petroleum landman on a contractual*
28 *basis. As used in this subparagraph, "petroleum landman" means an*
29 *individual performing services on a contractual basis that may include: (i)*
30 *Negotiating for the acquisition or divestiture of mineral rights; (ii)*
31 *negotiating business agreements that provide exploration for or*
32 *development of minerals; (iii) determining ownership in minerals through*
33 *the research of public and private records; (iv) reviewing the status of title,*
34 *curing title defects, providing title due diligence and otherwise reducing*
35 *title risk associated with ownership in minerals or the acquisition and*
36 *divestiture of mineral properties; (v) managing rights or obligations*
37 *derived from ownership of interests in minerals; or (vi) unitizing or*
38 *pooling of interests in minerals. For purposes of this subparagraph,*
39 *"minerals" includes oil, natural gas or petroleum.*

40 (j) "Employment office" means any office operated by this state and
41 maintained by the secretary of labor for the purpose of assisting persons to
42 become employed.

43 (k) "Fund" means the employment security fund established by this

1 act, to which all contributions and reimbursement payments required and
2 from which all benefits provided under this act shall be paid and including
3 all money received from the federal government as reimbursements
4 pursuant to section 204 of the federal-state extended compensation act of
5 1970, and amendments thereto.

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

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

15 (n) "Employment security administration fund" means the fund
16 established by this act, from which administrative expenses under this act
17 shall be paid.

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

41 (1) That part of the remuneration ~~which~~ *that* has been paid in a
42 calendar year to an individual by an employer or such employer's
43 predecessor in excess of \$3,000 for all calendar years prior to 1972, in

1 excess of \$4,200 for the calendar years 1972 to 1977, inclusive, in excess
2 of \$6,000 for calendar years 1978 to 1982, inclusive, in excess of \$7,000
3 for the calendar year 1983, in excess of \$8,000 for the calendar years 1984
4 to 2014, inclusive, and in excess of \$12,000 with respect to employment
5 during calendar year 2015, and in excess of \$14,000 with respect to all
6 calendar years thereafter, except that if the definition of the term "wages"
7 as contained in the federal unemployment tax act is amended to include
8 remuneration paid to an individual by an employer under the federal act in
9 excess of \$8,000 for the calendar years 1984-2014, inclusive, and in
10 excess of \$12,000 with respect to employment during calendar year 2015,
11 and in excess of \$14,000 with respect to all calendar years thereafter,
12 wages shall include remuneration paid in a calendar year to an individual
13 by an employer subject to this act or such employer's predecessor with
14 respect to employment during any calendar year up to an amount equal to
15 the dollar limitation specified in the federal unemployment tax act. For the
16 purposes of this subsection (o)(1), the term "employment" shall include
17 service constituting employment under any employment security law of
18 another state or of the federal government;

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

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

38 (4) any payment made to, or on behalf of, an employee or such
39 employee's beneficiary:

40 (A) From or to a trust described in section 401(a) of the federal
41 internal revenue code of 1986~~which~~ that is exempt from tax under section
42 501(a) of the federal internal revenue code of 1986 at the time of such
43 payment unless such payment is made to an employee of the trust as

1 remuneration for services rendered as such employee and not as a
2 beneficiary of the trust;

3 (B) under or to an annuity plan—~~which~~ *that*, at the time of such
4 payment, is a plan described in section 403(a) of the federal internal
5 revenue code of 1986;

6 (C) under a simplified employee pension as defined in section 408(k)
7 (1) of the federal internal revenue code of 1986, other than any
8 contribution described in section 408(k)(6) of the federal internal revenue
9 code of 1986;

10 (D) under or to an annuity contract described in section 403(b) of the
11 federal internal revenue code of 1986, other than a payment for the
12 purchase of such contract—~~which~~ *that* was made by reason of a salary
13 reduction agreement whether evidenced by a written instrument or
14 otherwise;

15 (E) under or to an exempt governmental deferred compensation plan
16 as defined in section 3121(v)(3) of the federal internal revenue code of
17 1986;

18 (F) to supplement pension benefits under a plan or trust described in
19 any of the foregoing provisions of this subparagraph to take into account
20 some portion or all of the increase in the cost of living, as determined by
21 the secretary of labor, since retirement but only if such supplemental
22 payments are under a plan—~~which~~ *that* is treated as a welfare plan under
23 section 3(2)(B)(ii) of the federal employee retirement income security act
24 of 1974; or

25 (G) under a cafeteria plan within the meaning of section 125 of the
26 federal internal revenue code of 1986;

27 (5) the payment by an employing unit—(, without deduction from the
28 remuneration of the employee), of the tax imposed upon an employee
29 under section 3101 of the federal internal revenue code of 1986 with
30 respect to remuneration paid to an employee for domestic service in a
31 private home of the employer or for agricultural labor;

32 (6) remuneration paid in any medium other than cash to an employee
33 for service not in the course of the employer's trade or business;

34 (7) remuneration paid to or on behalf of an employee if and to the
35 extent that at the time of the payment of such remuneration it is reasonable
36 to believe that a corresponding deduction is allowable under section 217 of
37 the federal internal revenue code of 1986 relating to moving expenses;

38 (8) any payment or series of payments by an employer to an
39 employee or any of such employee's dependents—~~which~~ *that* is paid:

40 (A) Upon or after the termination of an employee's employment
41 relationship because of: (i) Death; or (ii) retirement for disability; and

42 (B) under a plan established by the employer—~~which~~ *that* makes
43 provisions for employees generally, a class or classes of employees or for

1 such employees or a class or classes of employees and their dependents,
2 other than any such payment or series of payments—~~which~~ *that* would have
3 been paid if the employee's employment relationship had not been so
4 terminated;

5 (9) remuneration for agricultural labor paid in any medium other than
6 cash;

7 (10) any payment made, or benefit furnished, to or for the benefit of
8 an employee if at the time of such payment or such furnishing it is
9 reasonable to believe that the employee will be able to exclude such
10 payment or benefit from income under section 129 of the federal internal
11 revenue code of 1986—~~which~~ *that* relates to dependent care assistance
12 programs;

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

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

19 (13) any benefit provided to or on behalf of an employee if at the time
20 such benefit is provided it is reasonable to believe that the employee will
21 be able to exclude such benefit from income under section 74(c), 117 or
22 132 of the federal internal revenue code of 1986;

23 (14) any payment made, or benefit furnished, to or for the benefit of
24 an employee, if at the time of such payment or such furnishing it is
25 reasonable to believe that the employee will be able to exclude such
26 payment or benefit from income under section 127 of the federal internal
27 revenue code of 1986 relating to educational assistance to the employee; or

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

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

40 Any amount deferred under a nonqualified deferred compensation plan
41 shall be taken into account for purposes of this section as of the later of
42 when the services are performed or when there is no substantial risk of
43 forfeiture of the rights to such amount. Any amount taken into account as

1 wages by reason of this paragraph, and the income attributable thereto,
2 shall not thereafter be treated as wages for purposes of this section. For
3 purposes of this paragraph, the term "nonqualified deferred compensation
4 plan" means any plan or other arrangement for deferral of compensation
5 other than a plan described in subsection (o)(4).

6 (p) "Week" means such period or periods of seven consecutive
7 calendar days, as the secretary may by rules and regulations prescribe.

8 (q) "Calendar quarter" means the period of three consecutive calendar
9 months ending March 31, June 30, September 30 or December 31, or the
10 equivalent thereof as the secretary may by rules and regulations prescribe.

11 (r) "Insured work" means employment for employers.

12 (s) "Approved training" means any vocational training course or
13 course in basic education skills, including a job training program
14 authorized under the federal workforce investment act of 1998, approved
15 by the secretary or a person or persons designated by the secretary.

16 (t) "American vessel" or "American aircraft" means any vessel or
17 aircraft documented or numbered or otherwise registered under the laws of
18 the United States; and any vessel or aircraft ~~which~~ that is neither
19 documented or numbered or otherwise registered under the laws of the
20 United States nor documented under the laws of any foreign country, if its
21 crew performs service solely for one or more citizens or residents of the
22 United States or corporations organized under the laws of the United
23 States or of any state.

24 (u) "Institution of higher education," for the purposes of this section,
25 means an educational institution ~~which~~ that:

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

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

31 (3) provides an educational program for which it awards a bachelor's
32 or higher degree, or provides a program ~~which~~ that is acceptable for full
33 credit toward such a degree, a program of postgraduate or postdoctoral
34 studies, or a program of training to prepare students for gainful
35 employment in a recognized occupation; and

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

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

43 (v) "Educational institution" means any institution of higher

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

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

14 (A) On a farm, in the employ of any person, in connection with
15 cultivating the soil, or in connection with raising or harvesting any
16 agricultural or horticultural commodity, including the raising, shearing,
17 feeding, caring for, training, and management of livestock, bees, poultry,
18 and furbearing animals and wildlife.

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

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

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

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

42 (iii) the provisions of paragraphs (i) and (ii) ~~above of this subsection~~
43 ~~(w)(1)(D)~~ shall not be deemed to be applicable with respect to service

1 performed in connection with commercial canning or commercial freezing
2 or in connection with any agricultural or horticultural commodity after its
3 delivery to a terminal market for distribution for consumption.

4 (E) On a farm operated for profit if such service is not in the course
5 of the employer's trade or business.

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

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

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

28 (x) "Reimbursing employer" means any employer who makes
29 payments in lieu of contributions to the employment security fund as
30 provided in ~~subsection (e) of~~ K.S.A. 44-710(e), and amendments thereto.

31 (y) "Contributing employer" means any employer other than a
32 reimbursing employer or rated governmental employer.

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

41 (aa) "Domestic service" means any service for a person in the
42 operation and maintenance of a private household, local college club or
43 local chapter of a college fraternity or sorority, as distinguished from

1 service as an employee in the pursuit of an employer's trade, occupation,
2 profession, enterprise or vocation.

3 (bb) "Rated governmental employer" means any governmental entity
4 ~~which~~ *that* elects to make payments as provided by K.S.A. 44-710d, and
5 amendments thereto.

6 (cc) "Benefit cost payments" means payments made to the
7 employment security fund by a governmental entity electing to become a
8 rated governmental employer.

9 (dd) "Successor employer" means any employer, as described in
10 subsection (h) ~~of this section~~, ~~which~~ *that* acquires or in any manner
11 succeeds to: (1) Substantially all of the employing enterprises,
12 organization, trade or business of another employer; or (2) substantially all
13 the assets of another employer.

14 (ee) "Predecessor employer" means an employer, as described in
15 subsection (h) ~~of this section~~, who has previously operated a business or
16 portion of a business with employment to which another employer has
17 succeeded.

18 (ff) "Lessor employing unit" means any independently established
19 business entity ~~which~~ *that* engages in the business of providing leased
20 employees to a client lessee.

21 (gg) "Client lessee" means any individual, organization, partnership,
22 corporation or other legal entity leasing employees from a lessor
23 employing unit.

24 (hh) "Qualifying injury" means a personal injury by accident arising
25 out of and in the course of employment within the coverage of the Kansas
26 workers compensation act, K.S.A. 44-501 et seq., and amendments
27 thereto.

28 Sec. 2. K.S.A. 2019 Supp. 44-703 is hereby repealed.

29 Sec. 3. This act shall take effect and be in force from and after its
30 publication in the statute book.