

# **Report of the Special Committee on Government Overreach and the Impact of COVID-19 Mandates to the 2022 Kansas Legislature**

**CHAIRPERSON:** Senator Renee Erickson

**VICE-CHAIRPERSON:** Representative Brenda Landwehr

**OTHER MEMBERS:** Senators Ty Masterson, Pat Pettey, Mike Thompson, and Kellie Warren; Representatives John Barker, John Carmichael, Vic Miller, Stephen Owens, and Sean Tarwater

## **STUDY TOPICS**

The Committee is directed to:

- Review and examine potentially unconstitutional federal mandates including, but not limited to, the employer, federal contractor, and health care worker vaccine mandates; masking; and mandates requiring proof of vaccination status; and
- Provide recommendations for constitutionally proper responses to the mandates that would preserve local control and state autonomy, and ensure adequate safeguards for the freedom of all Kansans.



# Special Committee on Government Overreach and the Impact of COVID-19 Mandates

## REPORT

### Recommendation

The Special Committee on Government Overreach and the Impact of COVID-19 Mandates recommends the Legislature call a Special Session by petition for consideration of the three bill drafts listed below.

#### *Proposed Legislation: Three bills (designated for a potential 2021 Special Session.)*

**22rs2356.** Requiring Exemptions from Employer COVID-19 Vaccine Requirements and Providing for Waiver Requests and a Civil Action for Violations Related to Exemptions (as modified by the Committee);

**22rs2357.** Providing Exceptions to Unemployment Benefit Eligibility Rules for Otherwise Eligible Claimants Who Left Work or Were Discharged for Refusing to Comply with a COVID-19 Vaccine Requirement after Being Denied an Exemption and Retroactively Providing Benefits for Such Claimants Who Were Denied Benefits; and

**22rs2384.** Authorizing a Civil Action for Damages Caused by an Adverse Reaction or Injury Related to a COVID-19 Vaccine.

### BACKGROUND

On September 9, 2021, President Biden announced four federal actions regarding COVID-19 mandates:

- Issuance of Executive Order 14042, requiring COVID-19 vaccination for employees of contractors with federal executive departments and agencies (contractor mandate);
- Issuance of Executive Order 14043, ordering each federal executive branch agency to implement COVID-19 vaccination requirements for all federal employees (federal employee mandate);
- Development of an emergency standard by the U.S. Department of Labor's

Occupational Safety and Health Administration (OSHA) requiring employers with 100 or more employees to mandate each employee be vaccinated or submit to weekly testing (OSHA mandate); and

- Expansion of a prior COVID-19 vaccination requirement by the U.S. Centers for Medicare and Medicaid Services (CMS) to require such vaccinations for workers in most health care settings receiving Medicare or Medicaid reimbursement (CMS mandate).

Subsequent to the announcement and pursuant to KSA 46-1205, the Legislative Coordinating Council (LCC) appointed 11 members of the Legislature to serve as members of the Special Committee on Government Overreach and the Impact of COVID-19 Mandates (Committee). The

LCC directed the Committee to review and examine federal mandates including, but not limited to, the OSHA, contractor, and CMS mandates; masking; and mandates requiring proof of vaccination status. The LCC also directed the Committee to provide recommendations for responses to the mandates. The LCC granted the Committee five meeting days to complete this task.

## COMMITTEE ACTIVITIES

The Committee met four times, on October 29 and 30 and November 9 and 12, 2021. Documents and testimony from those meetings may be viewed via the Committee's page of the Legislature's website, [www.kslegislature.org/li/b2021\\_22/committees/ctte\\_spc\\_2021\\_gov\\_ovrrch\\_and\\_covid19\\_1/](http://www.kslegislature.org/li/b2021_22/committees/ctte_spc_2021_gov_ovrrch_and_covid19_1/).

### October 29 Meeting

On October 29, the Committee received an overview from staff of the Office of the Revisor of Statutes (Revisors) regarding the four federal actions regarding COVID-19 mandates announced by President Biden on September 9, 2021: two federal executive orders and two proposed federal agency actions. The information provided by the Revisors included the following: the contractor mandate is generally effective immediately and requires full vaccination of covered contractor employees no later than December 8, 2021; the federal employee mandate requires full vaccination of federal executive branch employees no later than November 22, 2021; the proposed OSHA action will be implemented by an emergency temporary standard, which can remain in effect for up to six months before OSHA must either adopt a permanent standard or discontinue the standard; and the CMS mandate will be implemented by an interim final rule by CMS, which the agency indicated would be issued in October. Neither the emergency temporary standard nor CMS interim final rule had been made public or published as of October 28.

In response to Committee questions, the Revisors indicated the CMS rule was expected to cover facilities participating in Medicare and Medicaid; the Supremacy Clause of the *U.S. Constitution* could limit the effectiveness of a Kansas statute attempting to limit the application

of the federal mandates, although this would likely be a fact-specific question that would require litigation to resolve; and the Executive Orders implementing the contractor mandate and federal employee mandate are worded carefully to try to fall within the authority and powers provided to the President over executive branch matters.

The Attorney General and the Solicitor General updated the Committee on pending and anticipated litigation by Kansas, other states, individuals, and other entities to challenge the OSHA, contractor, and CMS mandates. The Attorney General said he anticipates filing litigation, or joining other states in filing litigation, challenging these three mandates, while the federal employee mandate will likely be an issue left for resolution between federal employees and the federal government.

The Attorney General stated Supremacy Clause issues usually come down to two questions: is the federal action a valid exercise of federal power, and if so, is the state action actually contrary to, or in some manner in conflict with, the federal action? The Solicitor General stated the federal mandates may be challenged by individuals based on legal exceptions for sincerely held religious beliefs or medical circumstances and disabilities, and noted a budget proviso in 2021 SB 159 prohibiting the use of state funds to require an individual to use a COVID-19 vaccination passport within Kansas for any purpose.

In response to Committee questions, the Solicitor General provided additional detail regarding the OSHA emergency temporary standard process and stated that, in addition to litigation brought by the State challenging federal authority to issue the mandates, individuals also may be able to challenge the mandates on additional constitutional grounds.

The President and Chief Executive Officer of the Kansas Board of Regents addressed the Committee regarding the effect of the contractor mandate on state universities with federal contracts, including the following information. Based on the contractor mandate and guidance issued by the Safer Federal Workforce Task Force led by the White House COVID-19 Response Team, he issued a memorandum to state

universities instructing them to identify their contracts impacted by the contractor mandate.

It was noted state universities in Kansas have hundreds of contracts with a variety of federal agencies, and subcontracts with large private companies acting as federal contractors. These contracts and subcontracts involve thousands of jobs and hundreds of millions of dollars, and failure to adhere to the contractor mandate and guidance could jeopardize the contracts. In response to questions, he provided information regarding the vaccination exemption forms used by the University of Kansas, Kansas State University, and Wichita State University.

The Revisors then presented an overview of the legal framework governing exemptions from employer vaccination requirements for religious or medical reasons, including religious exemptions under Title VII of the federal Civil Rights Act of 1964 and the Kansas Act Against Discrimination, and medical exemptions under the Americans with Disabilities Act and the Kansas Act Against Discrimination.

A representative of the Kansas Chamber of Commerce expressed his organization's concerns with mandates regarding the COVID-19 vaccine that impact businesses, regardless of whether the mandate is issued by the federal or state government and regardless of the purpose of the mandate.

A representative of the International Association of Machinists and Aerospace Workers, Wichita, District 70, expressed his organization's opposition to the federal COVID-19 vaccine mandates.

The Kansas Department of Health and Environment and Kansas Department for Aging and Disability Services provided written-only joint informational testimony regarding the four federal actions regarding COVID-19 mandates.

The remainder of the October 29 meeting consisted of public comment by Senators Tyson and Straub, as well as by multiple private citizens, regarding the personal or business impact of COVID-19 mandates and the related federal actions.

## October 30 Meeting

On October 30, the public comment period that began during the October 29 meeting continued, with Senator Steffen, Representative Jacobs, and additional private citizens providing testimony. Most conferees expressed support for state or legislative action in response to the federal COVID-19 mandates to reduce or eliminate the application of the mandates in Kansas.

Multiple private citizens and representatives of various businesses and organizations submitted written-only public comment.

## November 9 Meeting

On November 9, the Committee received an overview from Revisors of two federal agency actions published in the *Federal Register* on November 5, 2021: the OSHA emergency temporary standard implementing the OSHA mandate, and the CMS interim final rule with comment period implementing the CMS mandate. The OSHA mandate covers all private employers with a total of 100 or more employees, subject to a few exceptions, and requires these employers to implement a mandatory COVID-19 vaccination policy or a policy requiring either vaccination or regular testing and face coverings. The Revisors stated covered employers must comply with most provisions of the OSHA emergency temporary standard by December 6, 2021, and the testing alternative must be completed by January 4, 2022. The CMS mandate requires staff at most Medicare-certified and Medicaid-certified health care providers and suppliers to be vaccinated against COVID-19. Compliance with most provisions of the CMS mandate interim final rule is required by December 6, 2021, and compliance with the requirement that all covered, non-exempt staff are fully vaccinated for COVID-19 must be completed by January 4, 2022. The Revisors provided additional details regarding the requirements of both the OSHA mandate and the CMS mandate.

The Revisors responded to Committee member questions regarding application of the mandates to employees working from home and telehealth employees; determination of covered employees to reach the minimum of 100 for the OSHA mandate to apply; the two lawsuits joined by the Kansas Attorney General against the mandates; federal

preemption arguments regarding the mandates; an injunction by the federal Fifth Circuit staying the OSHA mandate; OSHA enforcement of the OSHA mandate; and possible procedures and timelines for the litigation regarding the mandates.

An attorney planning to file litigation challenging the federal mandates provided an overview of the claims he planned to raise against the OSHA mandate, including arguments that the mandate expands OSHA powers beyond the limits of the interstate commerce clause; fails to meet the statutory standards for an emergency temporary standard; violates the First Amendment rights of employees because it effectively implements a tax for religious beliefs; and violates Fifth Amendment substantive liberty rights. He stated a federal regulation can preempt a state constitution or statute, but the regulation must be authorized by a federal act or else is null and void.

He said there should be legislation prohibiting state or private employers from imposing vaccine mandates on employees, but stated such legislation would probably need an exemption for the federal government as an employer to avoid possible constitutional issues that could result in the legislation being struck down by a court. He also suggested imposing liability on employers for any consequences to employees from taking a vaccine and that a bill require all employers to offer religious exemptions without second-guessing the request for exemption. In response to Committee questions, the attorney stated that federal employees and military members likely would have constitutional issues they could raise regarding the mandates in litigation, even though they should not be included in the state legislation; and enactment of state legislation could allow the Kansas Attorney General to raise any additional arguments regarding the mandates that might not have been included in existing litigation, should the state legislation be challenged in court.

A representative of the New Civil Liberties Alliance urged the Legislature to consider two things as it considered its options for legislation in response to the federal mandates: that the federal statute governing emergency use authorization of vaccines should be read to forbid federal mandates and constrain state and local mandates, and that the U.S. Supreme Court case *Jacobson v. Massachusetts*, frequently cited in support of

vaccine mandates, can be distinguished from the current mandate situation in several crucial respects.

A representative of the Kansas Justice Institute submitted written-only testimony regarding possible actions the State and Legislature could take in response to the federal mandates.

The Revisors explained two bill drafts developed at the request of Senator Masterson: 22rs2356, regarding exemptions from employer COVID-19 vaccine requirements, and 22rs2357, providing exceptions to unemployment benefit eligibility rules related to compliance with a COVID-19 vaccine requirement. [Note: Briefs of these bill drafts may be found in the final section of this report, and the bill drafts are attached.]

Following discussion, the Committee voted to conduct informational hearings on both bill drafts on November 12, with the bill drafts being subject to additional modifications by the Committee.

The Committee also voted to recommend the Legislature call a Special Session by petition for consideration of the two bill drafts. Senator Masterson announced the tentative date for such Special Session would be November 22, 2021.

## **November 12 Meeting**

On November 12, the Committee received an overview from the Revisors regarding exemptions from vaccination requirements for K-12 schools or colleges and universities in Kansas. Under Kansas statutes, children enrolling in K-12 schools and preschool or day care programs operated by schools are required to receive tests and inoculations deemed necessary by the Secretary of Health and Environment. The statutes provide for exemptions if the required test or inoculation would seriously endanger the life or health of the student or if the student is an adherent of a religious denomination whose religious teachings oppose such tests or inoculation. The Kansas Department of Health and Environment provides a uniform medical exemption form for use by school districts, but there is no uniform religious exemption form.

The Revisors stated the only Kansas statute governing vaccinations and exemptions in colleges

and universities, KSA 76-761a, relates to a meningitis vaccine requirement for all incoming students residing in student housing. Policies under the statute must include appropriate waiver procedures for students who refuse to take the vaccine, but reasons for refusal are not specified in the statute.

The Revisors responded to Committee questions regarding exemption forms; who determines whether an exemption is granted; quarantine requirements for students; and the rules and regulations process.

#### **Exemptions from employer requirements.**

The Committee held an informational hearing on bill draft 22rs2356, regarding exemptions from employer COVID-19 vaccine requirements. Representatives of the Libertarian Party (4th District), Kansans for Health Freedom, and Kansas Family Voice and nine private citizens testified as proponents of the bill draft. Proponents generally supported the protections provided by the bill for employees with medical or religious objections to receiving a vaccine; some proponents stated additional language should be added to further strengthen the protections. A representative of the National Federation of Independent Business and a private citizen testified as neutral conferees. Representatives of the Kansas Chamber of Commerce, Kansas State Nurses Association, Mainstream Coalition, and LeadingAge Kansas, as well as a private citizen, testified as opponents of the bill draft. Most opponents generally expressed their opposition to any mandates on businesses, by the federal or state government, regarding vaccines, and noted concerns regarding possible conflicts between the provisions of the bill and the federal mandates, which could require businesses to choose between violating state law and violating federal law.

Multiple private citizens and representatives of various businesses and organizations submitted written-only testimony expressing a variety of viewpoints on the bill draft and the topic of vaccine mandates, generally.

#### **Unemployment benefit eligibility.**

The Committee held an informational hearing on bill draft 22rs2357, providing exceptions to unemployment benefit eligibility rules related to

compliance with a COVID-19 vaccine requirement. A representative of the Libertarian Party (4th District) and two private citizens testified as proponents of the bill draft, stating support for extending benefit eligibility to an employee who leaves employment due to denial of their request for a medical or religious exemption to an employer COVID-19 vaccine requirement. Representatives of the Kansas Chamber of Commerce, Kansas State Nurses Association, National Federation of Independent Business, and LeadingAge Kansas testified as opponents of the bill draft, generally expressing concerns regarding possible unemployment insurance tax increases on employers and the possible impact on the Unemployment Insurance Trust Fund.

Multiple private citizens and representatives of various businesses and organizations submitted written-only testimony expressing a variety of viewpoints on the bill draft and the topic of vaccine mandates, generally.

**Bill drafts.** After discussion, the Committee agreed to modify bill draft 22rs2356, regarding exemptions from employer COVID-19 vaccine requirements, to:

- Expand the list of medical providers who could provide the written statement required to accompany a request for a medical exemption; and
- Prohibit punitive action by an employer against an employee who submits a request for exemption under the bill.

[*Note:* Copies of the modifications are included with the attachments.]

The Committee made no modifications to bill draft 22rs2357, providing exceptions to unemployment benefit eligibility rules related to compliance with a COVID-19 vaccine requirement.

Representative Miller submitted bill draft 22rs2384, authorizing a civil action for damages for an adverse vaccine reaction, and the Committee agreed to recommend the bill draft for consideration at the Special Session.

## RECOMMENDATIONS

The Committee recommends the Legislature call a Special Session by petition for consideration of three bill drafts:

- **22rs2356.** Requiring Exemptions from Employer COVID-19 Vaccine Requirements and Providing for Waiver Requests and a Civil Action for Violations Related to Exemptions (as modified by the Committee);
- **22rs2357.** Providing Exceptions to Unemployment Benefit Eligibility Rules for Otherwise Eligible Claimants Who Left Work or Were Discharged for Refusing to Comply with a COVID-19 Vaccine Requirement after Being Denied an Exemption and Retroactively Providing Benefits for Such Claimants Who Were Denied Benefits; and
- **22rs2384.** Authorizing a Civil Action for Damages Caused by an Adverse Reaction or Injury Related to a COVID-19 Vaccine.

[Note: Some provisions similar to those in these bill drafts are included in 2021 Special Session HB 2001, passed by the Legislature on November 22, 2021, and signed by the Governor and published in the *Kansas Register* on November 23, 2021.]

## BRIEFS OF PROPOSED LEGISLATION

**22rs2356.** Requiring Exemptions from Employer COVID-19 Vaccine Requirements and Providing for Waiver Requests and a Civil Action for Violations Related to Exemptions.

As modified by the Committee, this bill draft would, notwithstanding any provisions of law to the contrary, if an employer implements a COVID-19 vaccine requirement, require the employer to exempt an employee from such requirement, without punitive action, if the employee submits a written waiver request to the employer stating that complying with the requirement would:

- Endanger the life or health of the employee or an individual residing with the employee, as evidenced by an accompanying written statement signed by a physician or another person who performs acts pursuant to practice agreements or protocols, or at the order, direction, or delegation of a physician; or
- Violate sincerely held religious beliefs of the employee, as evidenced by an accompanying written statement signed by the employee.

The bill draft would require an employer to grant an exemption requested in accordance with the bill based on sincerely held religious beliefs without inquiring as to the sincerity of the request.

The bill draft would allow an employee aggrieved by a violation of the bill to bring a civil action in an appropriate district court against an employer for injunctive relief and actual damages caused by the violation, and would require the court to award a prevailing plaintiff in such action the cost of the suit, including reasonable attorney fees.

For purposes of its provisions, the bill draft would define “COVID-19 vaccine,” “COVID-19 vaccine requirement,” “employee,” “employer,” “person,” “physician,” and “punitive action.”

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

**22rs2357.** Providing Exceptions to Unemployment Benefit Eligibility Rules for Otherwise Eligible Claimants Who Left Work or Were Discharged for Refusing to Comply with a COVID-19 Vaccine Requirement after Being Denied an Exemption and Retroactively Providing Benefits for Such Claimants Who Were Denied Benefits.

The bill draft would amend the Employment Security Law to add the following to the list of conditions that do not disqualify for benefits an otherwise eligible unemployed claimant: the claimant has declined to accept work requiring compliance with a COVID-19 vaccine requirement as a condition of employment, the individual has



requested an exemption or accommodation from such requirement provided by state or federal law, and such request was denied. Such work would be deemed not to constitute suitable work for purposes of the Employment Security Law.

The bill draft would add to the list of conditions not disqualifying an individual for benefits for leaving work voluntarily without good cause a situation in which the individual left work due to the individual's refusal to comply with a COVID-19 vaccine requirement after the individual requested an exemption or accommodation from such requirement provided by state or federal law and such request was denied. Similarly, the bill draft would add an exception from disqualification for benefits when an individual is discharged by an employer for refusal to comply with a COVID-19 vaccine requirement after the individual requested an exemption or accommodation from such requirement provided by state or federal law and such request was denied, and an otherwise eligible individual would not be disqualified from benefits for refusing to accept new work if the position offered would require the individual to comply with a COVID-19 vaccine requirement, the individual has requested an exemption or accommodation from such requirement provided by state or federal law, and such request was denied.

The bill draft would allow a claimant, upon request, to be retroactively paid benefits for any week the claimant would otherwise have been eligible for such benefits, if the claimant was disqualified from receiving such benefits during the period of September 9, 2021, through the effective date of the bill, on the grounds that the claimant voluntarily left employment without good cause or was discharged or suspended for misconduct as the result of the claimant's refusal to comply with a COVID-19 vaccine requirement after the individual requested an exemption or accommodation from such requirement provided by state or federal law and such request was refused. The bill draft would require the Secretary of Labor (Secretary) to independently review any claims denied during the same period because the claimant was disqualified on the same grounds

under the same circumstances, and, if the claimant has not requested retroactive payment of such benefits, the Secretary would be required to retroactively pay benefits to such claimant for any week the claimant would otherwise have been eligible for such benefits. The Secretary would be required to develop and implement procedures to enable claimants to retroactively substantiate and file claims under these provisions, and the claimant or the employer would be allowed to appeal an award or denial of benefits made pursuant to these provisions.

For purposes of its provisions, the bill draft would define "COVID-19 vaccine" and "COVID-19 vaccine requirement" within the Employment Security Law.

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

**22rs2384.** Authorizing a Civil Action for Damages Caused by an Adverse Reaction or Injury Related to a COVID-19 Vaccine.

The bill draft would allow an individual to bring a civil action in an appropriate district court against an employer or other person for any damages caused by an adverse reaction or injury related to a COVID-19 vaccine if:

- The employer or other person imposed a COVID-19 vaccine requirement on such individual; and
- The individual complied with the requirement and received a COVID-19 vaccine as a result of such requirement.

The court would be required to award a prevailing plaintiff the cost of the suit, including reasonable attorney fees, in such an action.

For purposes of its provisions, the bill draft would define "COVID-19 vaccine," "COVID-19 vaccine requirement," "employer," and "person."

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

# Appendix

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AN ACT concerning employer COVID-19 vaccine requirements; requiring exemptions; providing for waiver requests and a civil action for violations related to exemptions.

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

Section 1. (a) Notwithstanding any provision of law to the contrary, if an employer implements a COVID-19 vaccine requirement, the employer shall exempt an employee from such requirement if the employee submits a written waiver request to the employer stating that complying with such requirement would:

(1) Endanger the life or health of the employee or an individual who resides with the employee, as evidenced by an accompanying written statement signed by a physician licensed by the state board of healing arts or an advanced practice registered nurse licensed by the board of nursing; or

(2) violate sincerely held religious beliefs of the employee, as evidenced by an accompanying written statement signed by the employee.

(b) An employer shall grant an exemption requested in accordance with this section based on sincerely held religious beliefs without inquiring into the sincerity of the request.

(c) (1) An employee aggrieved by a violation of this section may bring a civil action in an appropriate district court against an employer for injunctive relief and actual damages caused by such violation.

(2) In an action under this section, the court shall award a prevailing plaintiff the cost of the suit, including reasonable attorney fees.

(d) As used in this section:

(1) "COVID-19 vaccine" means an immunization, vaccination or injection against

disease caused by the novel coronavirus identified as SARS-CoV-2 or disease caused by a variant of the virus;

(2) "COVID-19 vaccine requirement" means that an employer:

(A) Requires an employee to receive a COVID-19 vaccine;

(B) requires an employee to provide documentation certifying receipt of a COVID-19 vaccine; or

(C) enforces a requirement described in subparagraph (A) or (B) that is imposed by the federal government or any other entity;

(3) "employee" means an individual who is employed in this state for wages by an employer and includes an applicant for employment;

(4) "employer" means any person in this state who employs one or more persons and includes the state of Kansas and all political subdivisions of the state;

(5) "person" means an individual, partnership, association, organization, corporation, legal representative, trustee, trustee in bankruptcy or receiver; and

(6) "physician" means an individual licensed to practice medicine and surgery.

Sec. 2. This act shall take effect and be in force from and after its publication in the Kansas register.

AN ACT concerning employer COVID-19 vaccine requirements; requiring exemptions; providing for waiver requests and a civil action for violations related to exemptions.

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

Section 1. (a) Notwithstanding any provision of law to the contrary, if an employer implements a COVID-19 vaccine requirement, the employer shall exempt an employee from such requirement if the employee submits a written waiver request to the employer stating that complying with such requirement would:

(1) Endanger the life or health of the employee or an individual who resides with the employee, as evidenced by an accompanying written statement signed by a physician ~~licensed by the state board of healing arts or an advanced practice registered nurse licensed by the board of nursing;~~ or

(2) violate sincerely held religious beliefs of the employee, as evidenced by an accompanying written statement signed by the employee.

(b) An employer shall grant an exemption requested in accordance with this section based on sincerely held religious beliefs without inquiring into the sincerity of the request.

(c) (1) An employee aggrieved by a violation of this section may bring a civil action in an appropriate district court against an employer for injunctive relief and actual damages caused by such violation.

(2) In an action under this section, the court shall award a prevailing plaintiff the cost of the suit, including reasonable attorney fees.

(d) As used in this section:

(1) "COVID-19 vaccine" means an immunization, vaccination or injection against

Proposed Amendments  
Physicians and Other Persons  
November 12, 2021  
Prepared by: Jason Thompson  
Office of Revisor of Statutes

or another person who performs acts pursuant to practice agreements, protocols or at the order, direction or delegation of a physician

disease caused by the novel coronavirus identified as SARS-CoV-2 or disease caused by a variant of the virus;

(2) "COVID-19 vaccine requirement" means that an employer:

(A) Requires an employee to receive a COVID-19 vaccine;

(B) requires an employee to provide documentation certifying receipt of a COVID-19 vaccine; or

(C) enforces a requirement described in subparagraph (A) or (B) that is imposed by the federal government or any other entity;

(3) "employee" means an individual who is employed in this state for wages by an employer and includes an applicant for employment;

(4) "employer" means any person in this state who employs one or more persons and includes the state of Kansas and all political subdivisions of the state;

(5) "person" means an individual, partnership, association, organization, corporation, legal representative, trustee, trustee in bankruptcy or receiver; and

(6) "physician" means an individual licensed to practice medicine and surgery.

by the state board of healing arts

Sec. 2. This act shall take effect and be in force from and after its publication in the Kansas register.

Proposed Amendments  
Punitive action prohibited  
November 12, 2021  
Prepared by: Jason Thompson  
Office of Revisor of Statutes

AN ACT concerning employer COVID-19 vaccine requirements; requiring exemptions; providing for waiver requests and a civil action for violations related to exemptions.

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

Section 1. (a) Notwithstanding any provision of law to the contrary, if an employer implements a COVID-19 vaccine requirement, the employer shall exempt an employee from such requirement if the employee submits a written waiver request to the employer stating that complying with such requirement would:

, without punitive action,

(1) Endanger the life or health of the employee or an individual who resides with the employee, as evidenced by an accompanying written statement signed by a physician licensed by the state board of healing arts or an advanced practice registered nurse licensed by the board of nursing; or

(2) violate sincerely held religious beliefs of the employee, as evidenced by an accompanying written statement signed by the employee.

(b) An employer shall grant an exemption requested in accordance with this section based on sincerely held religious beliefs without inquiring into the sincerity of the request.

(c) (1) An employee aggrieved by a violation of this section may bring a civil action in an appropriate district court against an employer for injunctive relief and actual damages caused by such violation.

(2) In an action under this section, the court shall award a prevailing plaintiff the cost of the suit, including reasonable attorney fees.

(d) As used in this section:

(1) "COVID-19 vaccine" means an immunization, vaccination or injection against

disease caused by the novel coronavirus identified as SARS-CoV-2 or disease caused by a variant of the virus;

(2) "COVID-19 vaccine requirement" means that an employer:

(A) Requires an employee to receive a COVID-19 vaccine;

(B) requires an employee to provide documentation certifying receipt of a COVID-19 vaccine; or

(C) enforces a requirement described in subparagraph (A) or (B) that is imposed by the federal government or any other entity;

(3) "employee" means an individual who is employed in this state for wages by an employer and includes an applicant for employment;

(4) "employer" means any person in this state who employs one or more persons and includes the state of Kansas and all political subdivisions of the state;

(5) "person" means an individual, partnership, association, organization, corporation, legal representative, trustee, trustee in bankruptcy or receiver; ~~and~~

Strike

(6) "physician" means an individual licensed to practice medicine and surgery;

Sec. 2. This act shall take effect and be in force from and after its publication in the Kansas register.

; and  
(7) "punitive action" means any dismissal, demotion, transfer, reassignment, suspension, reprimand, warning of possible dismissal or withholding of work



AN ACT concerning employment security law; providing exceptions to benefit eligibility conditions and disqualification conditions based on refusal to comply with COVID-19 vaccine requirements; retroactive provision of benefits when denied on the basis of discharge for misconduct or voluntarily leaving employment without good cause for refusal to comply with COVID-19 vaccine requirements; amending K.S.A. 44-703, 44-705, 44-706 and 44-709 and repealing the existing sections.

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

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

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

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

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

(b) "Base period" means the first four of the last five completed calendar quarters

immediately preceding the first day of an individual's benefit year, except that the base period in respect to combined wage claims means the base period as defined in the law of the paying state.

(1) If an individual lacks sufficient base period wages in order to establish a benefit year in the manner set forth above and satisfies the requirements of K.S.A. [44-703\(hh\)](#) and 44-705(g) ~~and K.S.A. 44-703(hh)~~, and amendments thereto, the claimant shall have an alternative base period substituted for the current base period so as not to prevent establishment of a valid claim. For the purposes of this subsection, "alternative base period" means the last four completed quarters immediately preceding the date the qualifying injury occurred. In the event the wages in the alternative base period have been used on a prior claim, then they shall be excluded from the new alternative base period.

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

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

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

(d) "Benefit year" with respect to any individual, means the period beginning with the first day of the first week for which such individual files a valid claim for benefits, and such benefit year shall continue for one full year. In the case of a combined wage claim, the benefit year shall be the benefit year of the paying state. Following the termination of a benefit year, a subsequent benefit year shall commence on the first day of the first week with respect to which an individual next files a claim for benefits. When such filing occurs with respect to a week that

overlaps the preceding benefit year, the subsequent benefit year shall commence on the first day immediately following the expiration date of the preceding benefit year. Any claim for benefits made in accordance with K.S.A. 44-709(a), and amendments thereto, shall be deemed to be a "valid claim" for the purposes of this subsection if the individual has been paid wages for insured work as required under K.S.A. 44-705(e), and amendments thereto. Whenever a week of unemployment overlaps two benefit years, such week shall, for the purpose of granting waiting-period credit or benefit payment with respect thereto, be deemed to be a week of unemployment within that benefit year in which the greater part of such week occurs.

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

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

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

(g) "Employing unit" means any individual or type of organization, including any partnership, association, limited liability company, agency or department of the state of Kansas and political subdivisions thereof, trust, estate, joint-stock company, insurance company or corporation, whether domestic or foreign including nonprofit corporations, or the receiver, trustee in bankruptcy, trustee or successor thereof, or the legal representatives of a deceased person, that has in its employ one or more individuals performing services for it within this state. All individuals performing services within this state for any employing unit that maintains two or more separate establishments within this state shall be deemed to be employed by a single

employing unit for all the purposes of this act. Each individual employed to perform or to assist in performing the work of any agent or employee of an employing unit shall be deemed to be employed by such employing unit for all the purposes of this act, whether such individual was hired or paid directly by such employing unit or by such agent or employee, provided the employing unit had actual or constructive knowledge of the employment.

(h) "Employer" means:

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

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

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

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

(C) For the purpose of this subsection (h)(1), in the case of any individual who is furnished by a crew leader to perform services in agricultural labor for any other person and who

is not treated as an employee of such crew leader:

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

(ii) such other person shall be treated as having paid cash remuneration to such individual in an amount equal to the amount of cash remuneration paid to such individual by the crew leader, either on the crew leader's own behalf or on behalf of such other person, for the services in agricultural labor performed for such other person.

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

(i) Furnishes individuals to perform services in agricultural labor for any other person;

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

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

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

(B) Employment of individuals to perform domestic service or agricultural labor and

wages paid for such service or labor shall not be considered in determining whether an employing unit meets the criteria of this subsection (h)(2).

(3) Any employing unit for which service is employment as defined in subsection (i)(3) (E).

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

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

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

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

(7) Any employing unit that has elected to become fully subject to this act in accordance with K.S.A. 44-711(c), and amendments thereto.

(8) Any employing unit not an employer by reason of any other paragraph of this subsection (h), for which within either the current or preceding calendar year services in

employment are or were performed with respect to which such employing unit is liable for any federal tax against which credit may be taken for contributions required to be paid into a state unemployment compensation fund; or that, as a condition for approval of this act for full tax credit against the tax imposed by the federal unemployment tax act, is required, pursuant to such act, to be an "employer" under this act.

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

(i) "Employment" means:

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

(A) Any active officer of a corporation; or

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

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

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

(ii) as a traveling or city salesman, other than as an agent-driver or commission-driver,

engaged upon a full-time basis in the solicitation on behalf of, and the transmission to, a principal, except for side-line sales activities on behalf of some other person, of orders from wholesalers, retailers, contractors, or operators of hotels, restaurants, or other similar establishments for merchandise for resale or supplies for use in their business operations.

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

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

(b) the individual does not have a substantial investment in facilities used in connection with the performance of the services, other than in facilities for transportation; and

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

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

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

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

(C) the individual's base of operations is in this state, or if there is no base of operations, then the place where service is directed or controlled is in this state.

(3) The term "employment" also includes:

(A) Services performed within this state but not covered by the provisions of subsection (i)(1) or subsection (i)(2) shall be deemed to be employment subject to this act if contributions are not required and paid with respect to such services under an unemployment compensation



law of any other state or of the federal government.

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

(C) Services covered by an arrangement pursuant to K.S.A. 44-714(j), and amendments thereto, between the secretary and the agency charged with the administration of any other state or federal unemployment compensation law, pursuant to which all services performed by an individual for an employing unit are deemed to be performed entirely within this state, shall be deemed to be employment if the secretary has approved an election of the employing unit for whom such services are performed, pursuant to which the entire service of such individual during the period covered by such election is deemed to be insured work.

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

(E) Services performed by an individual in the employ of this state or any instrumentality thereof, any political subdivision of this state or any instrumentality thereof, or in the employ of an Indian tribe, as defined pursuant to section 3306(u) of the federal unemployment tax act, any instrumentality of more than one of the foregoing or any instrumentality that is jointly owned by this state or a political subdivision thereof or Indian

tribes and one or more other states or political subdivisions of this or other states, provided that such service is excluded from "employment" as defined in the federal unemployment tax act by reason of section 3306(c)(7) of that act and is not excluded from "employment" under subsection (i)(4)(A) of this section. For purposes of this section, the exclusions from employment in subsections (i)(4)(A) and (i)(4)(L) shall also be applicable to services performed in the employ of an Indian tribe.

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

(G) The term "employment" includes the services of an individual who is a citizen of the United States, performed outside the United States except in Canada, in the employ of an American employer, other than service that is deemed "employment" under the provisions of subsection (i)(2) or subsection (i)(3) or the parallel provisions of another state's law, if:

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

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

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

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

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

(iii) none of the criteria of (i)(3)(G)(i) and (ii) are met but the employer has elected coverage in this state or, the employer having failed to elect coverage in any state, the individual

has filed a claim for benefits, based on such service, under the law of this state.

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

- (i) An individual who is a resident of the United States;
- (ii) a partnership if  $\frac{2}{3}$  or more of the partners are residents of the United States;
- (iii) a trust, if all of the trustees are residents of the United States; or
- (iv) a corporation organized under the laws of the United States or of any state.

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

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

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

(4) The term "employment" does not include: (A) Services performed in the employ of an employer specified in subsection (h)(3) if such service is performed by an individual in the

exercise of duties:

- (i) As an elected official;
  - (ii) as a member of a legislative body, or a member of the judiciary, of a state, political subdivision or of an Indian tribe;
  - (iii) as a member of the state national guard or air national guard;
  - (iv) as an employee serving on a temporary basis in case of fire, storm, snow, earthquake, flood or similar emergency;
  - (v) in a position that, under or pursuant to the laws of this state or tribal law, is designated as a major nontenured policymaking or advisory position or as a policymaking or advisory position the performance of the duties of which ordinarily does not require more than eight hours per week;
- (B) services with respect to which unemployment compensation is payable under an unemployment compensation system established by an act of congress;
- (C) services performed by an individual in the employ of such individual's son, daughter or spouse, and services performed by a child under the age of 21 years in the employ of such individual's father or mother;
- (D) services performed in the employ of the United States government or an instrumentality of the United States exempt under the constitution of the United States from the contributions imposed by this act, except that to the extent that the congress of the United States shall permit states to require any instrumentality of the United States to make payments into an unemployment fund under a state unemployment compensation law, all of the provisions of this act shall be applicable to such instrumentalities, and to services performed for such instrumentalities, in the same manner, to the same extent and on the same terms as to all other

employers, employing units, individuals and services. If this state shall not be certified for any year by the federal security agency under section 3304(c) of the federal internal revenue code of 1986, the payments required of such instrumentalities with respect to such year shall be refunded by the secretary from the fund in the same manner and within the same period as is provided in K.S.A. 44-717(h), and amendments thereto, with respect to contributions erroneously collected;

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

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

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

(H) services performed in any calendar quarter in the employ of any organization exempt from income tax under section 501(a) of the federal internal revenue code of 1986, other than an organization described in section 401(a) or under section 521 of such code, if the remuneration for such service is less than \$50. In construing the application of the term "employment," if services performed during  $\frac{1}{2}$  or more of any pay period by an individual for the person employing such individual constitute employment, all the services of such individual for such period shall be deemed to be employment; but if the services performed during more than  $\frac{1}{2}$

of any such pay period by an individual for the person employing such individual do not constitute employment, then none of the services of such individual for such period shall be deemed to be employment. As used in this subsection (i)(4)(H) the term "pay period" means a period, of not more than 31 consecutive days, for which a payment of remuneration is ordinarily made to the individual by the person employing such individual. This subsection (i)(4)(H) shall not be applicable with respect to services with respect to which unemployment compensation is payable under an unemployment compensation system established by an act of congress;

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

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

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

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

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

(L) services performed as part of an employment work-relief or work-training program assisted or financed in whole or in part by any federal agency or an agency of a state or political

subdivision thereof or of an Indian tribe, by an individual receiving such work relief or work training;

(M) services performed by an inmate of a custodial or correctional institution;

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

(O) services performed by an individual who is enrolled at a nonprofit or public educational institution that normally maintains a regular faculty and curriculum and normally has a regularly organized body of students in attendance at the place where its educational activities are carried on as a student in a full-time program, taken for credit at such institution, that combines academic instruction with work experience, if such service is an integral part of such program, and such institution has so certified to the employer, except that this subsection (i)(4) (O) shall not apply to service performed in a program established for or on behalf of an employer or group of employers;

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

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

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

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

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

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

(T) service not in the course of the employer's trade or business performed in any calendar quarter by an employee, unless the cash remuneration paid for such service is \$200 or more and such service is performed by an individual who is regularly employed by such employer to perform such service. For purposes of this paragraph, an individual shall be deemed to be regularly employed by an employer during a calendar quarter only if:



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

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

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

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

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

(i) Such person:

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

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

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

(iii) the services performed by the person are performed pursuant to a written contract between such person and the person for whom the services are performed and such contract

provides that the person will not be treated as an employee for federal and state tax purposes;

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

(W) services performed as an election official or election worker, if the amount of remuneration received by the individual during the calendar year for services as an election official or election worker is less than \$1,000;

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

(Y) services performed by an owner-operator of a motor vehicle that is leased or contracted to a licensed motor carrier with the services of a driver and is not treated under the terms of the lease agreement or contract with the licensed motor carrier as an employee for purposes of the federal insurance contribution act, 26 U.S.C. § 3101 et seq., the federal social security act, 42 U.S.C. § 301 et seq., the federal unemployment tax act, 26 U.S.C. § 3301 et seq., and the federal statutes prescribing income tax withholding at the source, 26 U.S.C. § 3401 et seq. Employees or agents of the owner-operator shall not be considered employees of the licensed motor carrier for purposes of employment security taxation or compensation. As used in this subsection (Y), the following definitions apply: (i) "Motor vehicle" means any automobile, truck-trailer, semitrailer, tractor, motor bus or any other self-propelled or motor-driven vehicle used upon any of the public highways of Kansas for the purpose of transporting persons or property; (ii) "licensed motor carrier" means any person, firm, corporation or other business entity that holds a certificate of convenience and necessity or a certificate of public service from

the state corporation commission or is required to register motor carrier equipment pursuant to 49 U.S.C. § 14504; and (iii) "owner-operator" means a person, firm, corporation or other business entity that is the owner of a single motor vehicle that is driven exclusively by the owner under a lease agreement or contract with a licensed motor carrier; and

(Z) services performed by a petroleum landman on a contractual basis. As used in this subparagraph, "petroleum landman" means an individual performing services on a contractual basis who is not an individual who is an active officer of a corporation as described in subsection (i)(1)(A) that may include:

- (i) Negotiating for the acquisition or divestiture of mineral rights;
- (ii) negotiating business agreements that provide exploration for or development of minerals;
- (iii) determining ownership in minerals through the research of public and private records;
- (iv) reviewing the status of title, curing title defects, providing title due diligence and otherwise reducing title risk associated with ownership in minerals or the acquisition and divestiture of mineral properties;
- (v) managing rights or obligations derived from ownership of interests in minerals; or
- (vi) unitizing or pooling of interests in minerals. For purposes of this subparagraph, "minerals" includes oil, natural gas or petroleum. "Services" does not include services performed for a governmental entity or any organization described in section 501(c)(3) of the federal internal revenue code of 1986, or a federally recognized Indian tribe that is exempt from income taxation under section 501(a) of the code.
- (j) "Employment office" means any office operated by this state and maintained by the

secretary of labor for the purpose of assisting persons to become employed.

(k) "Fund" means the employment security fund established by this act, to which all contributions and reimbursement payments required and from which all benefits provided under this act shall be paid and including all money received from the federal government as reimbursements pursuant to section 204 of the federal-state extended compensation act of 1970, and amendments thereto.

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

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

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

(o) "Wages" means all compensation for services, including commissions, bonuses, back pay and the cash value of all remuneration, including benefits, paid in any medium other than cash. The reasonable cash value of remuneration in any medium other than cash, shall be estimated and determined in accordance with rules and regulations prescribed by the secretary. Compensation payable to an individual that has not been actually received by that individual within 21 days after the end of the pay period in which the compensation was earned shall be considered to have been paid on the 21<sup>st</sup> day after the end of that pay period. Effective January 1,

1986, gratuities, including tips received from persons other than the employing unit, shall be considered wages when reported in writing to the employer by the employee. Employees must furnish a written statement to the employer, reporting all tips received if they total \$20 or more for a calendar month whether the tips are received directly from a person other than the employer or are paid over to the employee by the employer. This includes amounts designated as tips by a customer who uses a credit card to pay the bill. Notwithstanding the other provisions of this subsection (o), wages paid in back pay awards or settlements shall be allocated to the week or weeks and reported in the manner as specified in the award or agreement, or, in the absence of such specificity in the award or agreement, such wages shall be allocated to the week or weeks in which such wages, in the judgment of the secretary, would have been paid. The term "wages" shall not include:

(1) That part of the remuneration that has been paid in a calendar year to an individual by an employer or such employer's predecessor in excess of \$3,000 for all calendar years prior to 1972, in excess of \$4,200 for the calendar years 1972 to 1977, inclusive, in excess of \$6,000 for calendar years 1978 to 1982, inclusive, in excess of \$7,000 for the calendar year 1983, in excess of \$8,000 for the calendar years 1984 to 2014, inclusive, and in excess of \$12,000 with respect to employment during calendar year 2015, and in excess of \$14,000 with respect to all calendar years thereafter, except that if the definition of the term "wages" as contained in the federal unemployment tax act is amended to include remuneration paid to an individual by an employer under the federal act in excess of \$8,000 for the calendar years 1984-2014, inclusive, and in excess of \$12,000 with respect to employment during calendar year 2015, and in excess of \$14,000 with respect to all calendar years thereafter, wages shall include remuneration paid in a calendar year to an individual by an employer subject to this act or such employer's predecessor

with respect to employment during any calendar year up to an amount equal to the dollar limitation specified in the federal unemployment tax act. For the purposes of this subsection (o) (1), the term "employment" shall include service constituting employment under any employment security law of another state or of the federal government;

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

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

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

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

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

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

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

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

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

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

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

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

(6) remuneration paid in any medium other than cash to an employee for service not in

the course of the employer's trade or business;

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

(8) any payment or series of payments by an employer to an employee or any of such employee's dependents that is paid:

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

(B) under a plan established by the employer that makes provisions for employees generally, a class or classes of employees or for such employees or a class or classes of employees and their dependents, other than any such payment or series of payments that would have been paid if the employee's employment relationship had not been so terminated;

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

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

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

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



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

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

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

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

Any amount deferred under a nonqualified deferred compensation plan shall be taken into account for purposes of this section as of the later of when the services are performed or when there is no substantial risk of forfeiture of the rights to such amount. Any amount taken into account as wages by reason of this paragraph, and the income attributable thereto, shall not thereafter be treated as wages for purposes of this section. For purposes of this paragraph, the term "nonqualified deferred compensation plan" means any plan or other arrangement for

deferral of compensation other than a plan described in subsection (o)(4).

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

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

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

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

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

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

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

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

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

(4) is a public or other nonprofit institution.

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

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

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

(A) On a farm, in the employ of any person, in connection with cultivating the soil, or in connection with raising or harvesting any agricultural or horticultural commodity, including

the raising, shearing, feeding, caring for, training, and management of livestock, bees, poultry, and furbearing animals and wildlife.

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

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

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

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

(iii) the provisions of paragraphs (i) and (ii) shall not be deemed to be applicable with respect to services performed in connection with commercial canning or commercial freezing or in connection with any agricultural or horticultural commodity after its delivery to a terminal

market for distribution for consumption.

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

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

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

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

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

thereto.

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

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

(aa) "Domestic service" means any services for a person in the operation and maintenance of a private household, local college club or local chapter of a college fraternity or sorority, as distinguished from service as an employee in the pursuit of an employer's trade, occupation, profession, enterprise or vocation.

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

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

(dd) "Successor employer" means any employer, as described in subsection (h), that acquires or in any manner succeeds to: (1) Substantially all of the employing enterprises, organization, trade or business of another employer; or (2) substantially all the assets of another employer.

(ee) "Predecessor employer" means an employer, as described in subsection (h), who has previously operated a business or portion of a business with employment to which another

employer has succeeded.

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

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

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

(ii) (1) "COVID-19 vaccine" means an immunization, vaccination or injection against disease caused by the novel coronavirus identified as SARS-CoV-2 or disease caused by a variant of the virus.

(2) "COVID-19 vaccine requirement" means that an employer:

(A) Requires an individual to receive a COVID-19 vaccine;

(B) requires an individual to provide documentation certifying receipt of a COVID-19 vaccine; or

(C) enforces a requirement described in subparagraph (A) or (B) that is imposed by the federal government or another entity.

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

(a) The claimant has registered for work at and thereafter continued to report at an employment office in accordance with rules and regulations adopted by the secretary, except that,

subject to the provisions of K.S.A. 44-704(a), and amendments thereto, the secretary may adopt rules and regulations that waive or alter either or both of the requirements of this subsection.

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

(c) (1) The claimant is able to perform the duties of such claimant's customary occupation or the duties of other occupations that the claimant is reasonably fitted by training or experience, and is available for work, as demonstrated by the claimant's pursuit of the full course of action most reasonably calculated to result in the claimant's reemployment except that, notwithstanding any other provisions of this section, an unemployed claimant otherwise eligible for benefits shall not become ineligible for benefits:

(A) Because of the claimant's enrollment in and satisfactory pursuit of approved training, including training approved under section 236(a)(1) of the trade act of 1974;

(B) solely because such individual is seeking only part-time employment if the individual is available for a number of hours per week that are comparable to the individual's part-time work experience in the base period;~~or~~

(C) because ~~a~~ the claimant is not actively seeking work:

(i) During a state of disaster emergency proclaimed by the governor pursuant to K.S.A. 48-924 and 48-925, and amendments thereto;

(ii) in response to the spread of the public health emergency of COVID-19; and

(iii) the state's temporary waiver of the work search requirement under the employment security law for such claimant is in compliance with the families first coronavirus response act, public law 116-127; or

(D) notwithstanding any other provision of the employment security law, because the



claimant has declined to accept work that requires compliance with a COVID-19 vaccine requirement as a condition of employment, the individual has requested an exemption or accommodation from such requirement provided by state or federal law and such request was denied. In such case, such work for such claimant shall be deemed not to constitute suitable work for purposes of the employment security law.

(2) The secretary shall develop and implement procedures to address claimants who refuse to return to suitable work or refuse to accept an offer of suitable work without good cause. Such procedures shall include the receipt and processing of job refusal reports from employers, the evaluation of such reports in consideration of the claimant's work history and skills and suitability of the offered employment and guidelines for a determination of whether the claimant shall remain eligible for unemployment benefits or has failed to meet the work search requirements of this subsection or the requirements of K.S.A. 44-706(c), and amendments thereto. In determining whether the employment offered is suitable, the secretary's considerations shall include whether the employment offers wages comparable to the claimant's recent employment and work duties that correspond to the claimant's education level and previous work experience. The secretary shall also consider whether the employment offers wages of at least the amount of the claimant's maximum weekly benefits.

(3) To facilitate the requirements of paragraph (2), the secretary shall provide readily accessible means for employers to notify the department when a claimant refuses to return to work or refuses an offer of employment, including by telephone, email or an online web portal. Nothing in this subsection shall be construed as to require an employer to report such job refusals to the department.

(4) At the time of receipt of notice from an employer pursuant to paragraph (3), the

secretary shall, within 10 business days of receipt of such notice from the employer, provide a notice to the claimant who has refused to return to work or to accept an offer of suitable work without good cause. The method of providing the notice to the claimant shall be consistent with other correspondence from the department to the claimant and may include mail, telephone, email or through an online web portal. The notice shall, at minimum, include the following information:

(A) A summary of state employment security law regarding a claimant's duties to return to work or accept suitable work;

(B) a statement that the claimant has been or may be disqualified and the claimant's right to collect benefits has been or may be terminated for refusal to return to work or accept suitable work without good cause, as provided by this subsection and K.S.A. 44-706(c), and amendments thereto;

(C) an explanation of what constitutes suitable work under the employment security law; and

(D) instructions for contesting a denial of a claim if the denial is based upon a report by an employer that the claimant has refused to return to work or has refused to accept an offer of suitable work.

(5) For the purposes of this subsection, an inmate of a custodial or correctional institution shall be deemed to be unavailable for work and not eligible to receive unemployment compensation while incarcerated.

(d) (1) Except as provided further, the claimant has been unemployed for a waiting period of one week or the claimant is unemployed and has satisfied the requirement for a waiting period of one week under the shared work unemployment compensation program as provided in

K.S.A. 44-757(k)(4), and amendments thereto, and that period of one week, in either case, occurs within the benefit year that includes the week for which the claimant is claiming benefits. No week shall be counted as a week of unemployment for the purposes of this subsection:

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

(B) if the individual fails to meet with the other eligibility requirements of this section;

or

(C) if an individual is seeking unemployment benefits under the unemployment compensation law of any other state or of the United States, except that if the appropriate agency of such state or of the United States finally determines that the claimant is not entitled to unemployment benefits under such other law, this subparagraph shall not apply.

(2) (A) The waiting week requirement of paragraph (1) shall not apply to:

(i) New claims by claimants who become unemployed as a result of an employer terminating business operations within this state, declaring bankruptcy or initiating a work force reduction pursuant to public law 100-379, the federal worker adjustment and retraining notification act, 29 U.S.C. §§ 2101 through 2109, as amended; or

(ii) new claims filed on or after April 5, 2020, through December 26, 2020, in accordance with the families first coronavirus response act, public law 116-127 and the federal CARES act, public law 116-136.

(B) The secretary shall adopt rules and regulations to administer the provisions of this paragraph.

(3) If the waiting week requirement of paragraph (1) applies, a claimant shall become eligible to receive compensation for the waiting period of one week, pursuant to paragraph (1), upon completion of three weeks of unemployment consecutive to such waiting period. This

paragraph shall not apply to initial claims effective on and after April 1, 2021.

(e) For benefit years established on and after the effective date of this act, the claimant has been paid total wages for insured work in the claimant's base period of not less than 30 times the claimant's weekly benefit amount and has been paid wages in more than one quarter of the claimant's base period, except that the wage credits of an individual earned during the period commencing with the end of a prior base period and ending on the date that such individual filed a valid initial claim shall not be available for benefit purposes in a subsequent benefit year unless, in addition thereto, such individual has returned to work and subsequently earned wages for insured work in an amount equal to at least eight times the claimant's current weekly benefit amount.

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

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

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

(2) the claimant files for benefits within 24 months of the date the qualifying injury occurred; and

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

Sec. 3. K.S.A. 44-706 is hereby amended to read as follows: 44-706. The secretary shall examine whether an individual has separated from employment for each week claimed. The secretary shall apply the provisions of this section to the individual's most recent employment prior to the week claimed. An individual shall be disqualified for benefits:

(a) If the individual left work voluntarily without good cause attributable to the work or the employer, subject to the other provisions of this subsection. For purposes of this subsection, "good cause" is cause of such gravity that would impel a reasonable, not supersensitive, individual exercising ordinary common sense to leave employment. Good cause requires a showing of good faith of the individual leaving work, including the presence of a genuine desire to work. Failure to return to work after expiration of approved personal or medical leave, or both, shall be considered a voluntary resignation. After a temporary job assignment, failure of an individual to affirmatively request an additional assignment on the next succeeding workday, if required by the employment agreement, after completion of a given work assignment, shall constitute leaving work voluntarily. The disqualification shall begin the day following the separation and shall continue until after the individual has become reemployed and has had earnings from insured work of at least three times the individual's weekly benefit amount. An individual shall not be disqualified under this subsection if:

(1) The individual was forced to leave work because of illness or injury upon the advice of a licensed and practicing health care provider and, upon learning of the necessity for absence, immediately notified the employer thereof, or the employer consented to the absence, and after

recovery from the illness or injury, when recovery was certified by a practicing health care provider, the individual returned to the employer and offered to perform services and the individual's regular work or comparable and suitable work was not available. As used in this paragraph "health care provider" means any person licensed by the proper licensing authority of any state to engage in the practice of medicine and surgery, osteopathy, chiropractic, dentistry, optometry, podiatry or psychology;

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

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

(4) the spouse of an individual who is a member of the armed forces of the United States who left work because of the voluntary or involuntary transfer of the individual's spouse from one job to another job, which is for the same employer or for a different employer, at a geographic location which makes it unreasonable for the individual to continue work at the individual's job. For the purposes of this provision the term "armed forces" means active duty in the army, navy, marine corps, air force, coast guard or any branch of the military reserves of the United States;

(5) the individual left work because of hazardous working conditions; in determining whether or not working conditions are hazardous for an individual, the degree of risk involved to the individual's health, safety and morals, the individual's physical fitness and prior training and the working conditions of workers engaged in the same or similar work for the same and other employers in the locality shall be considered; as used in this paragraph, "hazardous working conditions" means working conditions that could result in a danger to the physical or mental well-being of the individual; each determination as to whether hazardous working conditions

exist shall include, but shall not be limited to, a consideration of: (A) The safety measures used or the lack thereof; and (B) the condition of equipment or lack of proper equipment; no work shall be considered hazardous if the working conditions surrounding the individual's work are the same or substantially the same as the working conditions generally prevailing among individuals performing the same or similar work for other employers engaged in the same or similar type of activity;

(6) the individual left work to enter training approved under section 236(a)(1) of the federal trade act of 1974, provided the work left is not of a substantially equal or higher skill level than the individual's past adversely affected employment, as defined for purposes of the federal trade act of 1974, and wages for such work are not less than 80% of the individual's average weekly wage as determined for the purposes of the federal trade act of 1974;

(7) the individual left work because of unwelcome harassment of the individual by the employer or another employee of which the employing unit had knowledge and that would impel the average worker to give up such worker's employment;

(8) the individual left work to accept better work; each determination as to whether or not the work accepted is better work shall include, but shall not be limited to, consideration of: (A) The rate of pay, the hours of work and the probable permanency of the work left as compared to the work accepted; (B) the cost to the individual of getting to the work left in comparison to the cost of getting to the work accepted; and (C) the distance from the individual's place of residence to the work accepted in comparison to the distance from the individual's residence to the work left;

(9) the individual left work as a result of being instructed or requested by the employer, a supervisor or a fellow employee to perform a service or commit an act in the scope of official

job duties which is in violation of an ordinance or statute;

(10) the individual left work because of a substantial violation of the work agreement by the employing unit and, before the individual left, the individual had exhausted all remedies provided in such agreement for the settlement of disputes before terminating. For the purposes of this paragraph, a demotion based on performance does not constitute a violation of the work agreement;

(11) after making reasonable efforts to preserve the work, the individual left work due to a personal emergency of such nature and compelling urgency that it would be contrary to good conscience to impose a disqualification; ~~or~~

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

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

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

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

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

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



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

(i) A restraining order or other documentation of equitable relief by a court of competent jurisdiction;

(ii) a police record documenting the abuse;

(iii) documentation that the abuser has been convicted of one or more of the offenses enumerated in articles 34 and 35 of chapter 21 of the Kansas Statutes Annotated, prior to their repeal, or articles 54 or 55 of chapter 21 of the Kansas Statutes Annotated, or K.S.A. 2021 Supp. 21-6104, 21-6325, 21-6326 or 21-6418 through 21-6422, and amendments thereto, where the victim was a family or household member;

(iv) medical documentation of the abuse;

(v) a statement provided by a counselor, social worker, health care provider, clergy, shelter worker, legal advocate, domestic violence or sexual assault advocate or other professional who has assisted the individual in dealing with the effects of abuse on the individual or the individual's family; or

(vi) a sworn statement from the individual attesting to the abuse.

(C) No evidence of domestic violence experienced by an individual, including the individual's statement and corroborating evidence, shall be disclosed by the department of labor unless consent for disclosure is given by the individual; or

(13) the individual left work due to the individual's refusal to comply with a COVID-19 vaccine requirement after the individual requested an exemption or accommodation from such requirement provided by state or federal law and such request was denied.

(b) If the individual has been discharged or suspended for misconduct connected with

the individual's work. The disqualification shall begin the day following the separation and shall continue until after the individual becomes reemployed and in cases where the disqualification is due to discharge for misconduct has had earnings from insured work of at least three times the individual's determined weekly benefit amount, except that if an individual is discharged for gross misconduct connected with the individual's work, such individual shall be disqualified for benefits until such individual again becomes employed and has had earnings from insured work of at least eight times such individual's determined weekly benefit amount. In addition, all wage credits attributable to the employment from which the individual was discharged for gross misconduct connected with the individual's work shall be canceled. No such cancellation of wage credits shall affect prior payments made as a result of a prior separation.

(1) For the purposes of this subsection, "misconduct" is defined as a violation of a duty or obligation reasonably owed the employer as a condition of employment including, but not limited to, a violation of a company rule, including a safety rule, if: (A) The individual knew or should have known about the rule; (B) the rule was lawful and reasonably related to the job; and (C) the rule was fairly and consistently enforced.

(2) (A) Failure of the employee to notify the employer of an absence and an individual's leaving work prior to the end of such individual's assigned work period without permission shall be considered prima facie evidence of a violation of a duty or obligation reasonably owed the employer as a condition of employment.

(B) For the purposes of this subsection, misconduct shall include, but not be limited to, violation of the employer's reasonable attendance expectations if the facts show:

- (i) The individual was absent or tardy without good cause;
- (ii) the individual had knowledge of the employer's attendance expectation; and

(iii) the employer gave notice to the individual that future absence or tardiness may or will result in discharge.

(C) For the purposes of this subsection, if an employee disputes being absent or tardy without good cause, the employee shall present evidence that a majority of the employee's absences or tardiness were for good cause. If the employee alleges that the employee's repeated absences or tardiness were the result of health related issues, such evidence shall include documentation from a licensed and practicing health care provider as defined in subsection (a) (1).

(3) (A) The term "gross misconduct" as used in this subsection shall be construed to mean conduct evincing extreme, willful or wanton misconduct as defined by this subsection. Gross misconduct shall include, but not be limited to: (i) Theft; (ii) fraud; (iii) intentional damage to property; (iv) intentional infliction of personal injury; or (v) any conduct that constitutes a felony.

(B) For the purposes of this subsection, the following shall be conclusive evidence of gross misconduct:

(i) The use of alcoholic liquor, cereal malt beverage or a nonprescribed controlled substance by an individual while working;

(ii) the impairment caused by alcoholic liquor, cereal malt beverage or a nonprescribed controlled substance by an individual while working;

(iii) a positive breath alcohol test or a positive chemical test, provided:

(a) The test was either:

(1) Required by law and was administered pursuant to the drug free workplace act, 41 U.S.C. § 701 et seq.;

(2) administered as part of an employee assistance program or other drug or alcohol treatment program in which the employee was participating voluntarily or as a condition of further employment;

(3) requested pursuant to a written policy of the employer of which the employee had knowledge and was a required condition of employment;

(4) required by law and the test constituted a required condition of employment for the individual's job; or

(5) there was reasonable suspicion to believe that the individual used, had possession of, or was impaired by alcoholic liquor, cereal malt beverage or a nonprescribed controlled substance while working;

(b) the test sample was collected either:

(1) As prescribed by the drug free workplace act, 41 U.S.C. § 701 et seq.;

(2) as prescribed by an employee assistance program or other drug or alcohol treatment program in which the employee was participating voluntarily or as a condition of further employment;

(3) as prescribed by the written policy of the employer of which the employee had knowledge and which constituted a required condition of employment;

(4) as prescribed by a test which was required by law and which constituted a required condition of employment for the individual's job; or

(5) at a time contemporaneous with the events establishing probable cause;

(c) the collecting and labeling of a chemical test sample was performed by a licensed health care professional or any other individual certified pursuant to paragraph (b)(3)(A)(iii)(f) or authorized to collect or label test samples by federal or state law, or a federal or state rule or

regulation having the force or effect of law, including law enforcement personnel;

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

(e) the chemical test was confirmed by gas chromatography, gas chromatography-mass spectroscopy or other comparably reliable analytical method, except that no such confirmation is required for a blood alcohol sample or a breath alcohol test;

(f) the breath alcohol test was administered by an individual trained to perform breath tests, the breath testing instrument used was certified and operated strictly according to a description provided by the manufacturers and the reliability of the instrument performance was assured by testing with alcohol standards; and

(g) the foundation evidence establishes, beyond a reasonable doubt, that the test results were from the sample taken from the individual;

(iv) an individual's refusal to submit to a chemical test or breath alcohol test, provided:

(a) The test meets the standards of the drug free workplace act, 41 U.S.C. § 701 et seq.;

(b) the test was administered as part of an employee assistance program or other drug or alcohol treatment program in which the employee was participating voluntarily or as a condition of further employment;

(c) the test was otherwise required by law and the test constituted a required condition of employment for the individual's job;

(d) the test was requested pursuant to a written policy of the employer of which the employee had knowledge and was a required condition of employment; or

(e) there was reasonable suspicion to believe that the individual used, possessed or was impaired by alcoholic liquor, cereal malt beverage or a nonprescribed controlled substance while working;

(v) an individual's dilution or other tampering of a chemical test.

(C) For purposes of this subsection:

(i) "Alcohol concentration" means the number of grams of alcohol per 210 liters of breath;

(ii) "alcoholic liquor" means the same as provided in K.S.A. 41-102, and amendments thereto;

(iii) "cereal malt beverage" means the same as provided in K.S.A. 41-2701, and amendments thereto;

(iv) "chemical test" includes, but is not limited to, tests of urine, blood or saliva;

(v) "controlled substance" means the same as provided in K.S.A. 2021 Supp. 21-5701, and amendments thereto;

(vi) "required by law" means required by a federal or state law, a federal or state rule or regulation having the force and effect of law, a county resolution or municipal ordinance, or a policy relating to public safety adopted in an open meeting by the governing body of any special district or other local governmental entity;

(vii) "positive breath test" means a test result showing an alcohol concentration of 0.04 or greater, or the levels listed in 49 C.F.R. part 40, if applicable, unless the test was administered as part of an employee assistance program or other drug or alcohol treatment program in which the employee was participating voluntarily or as a condition of further employment, in which case "positive chemical test" shall mean a test result showing an alcohol concentration at or

above the levels provided for in the assistance or treatment program;

(viii) "positive chemical test" means a chemical result showing a concentration at or above the levels listed in K.S.A. 44-501, and amendments thereto, or 49 C.F.R. part 40, as applicable, for the drugs or abuse listed therein, unless the test was administered as part of an employee assistance program or other drug or alcohol treatment program in which the employee was participating voluntarily or as a condition of further employment, in which case "positive chemical test" means a chemical result showing a concentration at or above the levels provided for in the assistance or treatment program.

(4) An individual shall not be disqualified under this subsection if the individual is discharged under the following circumstances:

(A) The employer discharged the individual after learning the individual was seeking other work or when the individual gave notice of future intent to quit, except that the individual shall be disqualified after the time at which such individual intended to quit and any individual who commits misconduct after such individual gives notice to such individual's intent to quit shall be disqualified;

(B) the individual was making a good-faith effort to do the assigned work but was discharged due to:

- (i) Inefficiency;
- (ii) unsatisfactory performance due to inability, incapacity or lack of training or experience;
- (iii) isolated instances of ordinary negligence or inadvertence;
- (iv) ~~good-faith~~ good faith errors in judgment or discretion; or
- (v) unsatisfactory work or conduct due to circumstances beyond the individual's

control;~~or~~

(C) the individual's refusal to perform work in excess of the contract of hire; or

(D) the employer discharged the individual for refusal to comply with a COVID-19 vaccine requirement after the individual requested an exemption or accommodation from such requirement provided by state or federal law and such request was denied.

(c) If the individual has failed, without good cause, to either apply for suitable work when so directed by the employment office of the secretary of labor, or to accept suitable work when offered to the individual by the employment office, the secretary of labor, or an employer, such disqualification shall begin with the week in which such failure occurred and shall continue until the individual becomes reemployed and has had earnings from insured work of at least three times such individual's determined weekly benefit amount. In determining whether or not any work is suitable for an individual, the secretary of labor, or a person or persons designated by the secretary, shall consider the degree of risk involved to health, safety and morals, physical fitness and prior training, experience and prior earnings, length of unemployment and prospects for securing local work in the individual's customary occupation or work for which the individual is reasonably fitted by training or experience, and the distance of the available work from the individual's residence. Notwithstanding any other provisions of this act, an otherwise eligible individual shall not be disqualified for refusing an offer of suitable employment, or failing to apply for suitable employment when notified by an employment office, or for leaving the individual's most recent work accepted during approved training, including training approved under section 236(a)(1) of the trade act of 1974, if the acceptance of or applying for suitable employment or continuing such work would require the individual to terminate approved training and no work shall be deemed suitable and benefits shall not be denied under this act to any



otherwise eligible individual for refusing to accept new work under any of the following conditions: (1) If the position offered is vacant due directly to a strike, lockout or other labor dispute; (2) if the remuneration, hours or other conditions of the work offered are substantially less favorable to the individual than those prevailing for similar work in the locality; (3) if as a condition of being employed, the individual would be required to join or to resign from or refrain from joining any labor organization;~~and~~ (4) if the individual left employment as a result of domestic violence, and the position offered does not reasonably accommodate the individual's physical, psychological, safety, or legal needs relating to such domestic violence; and (5) if the position offered would require the individual to comply with a COVID-19 vaccine requirement, the individual has requested an exemption or accommodation from such requirement provided by state or federal law and such request was denied.

(d) For any week with respect to which the secretary of labor, or a person or persons designated by the secretary, finds that the individual's unemployment is due to a stoppage of work which exists because of a labor dispute or there would have been a work stoppage had normal operations not been maintained with other personnel previously and currently employed by the same employer at the factory, establishment or other premises at which the individual is or was last employed, except that this subsection (d) shall not apply if it is shown to the satisfaction of the secretary of labor, or a person or persons designated by the secretary, that: (1) The individual is not participating in or financing or directly interested in the labor dispute which caused the stoppage of work; and (2) the individual does not belong to a grade or class of workers of which, immediately before the commencement of the stoppage, there were members employed at the premises at which the stoppage occurs any of whom are participating in or financing or directly interested in the dispute. If in any case separate branches of work which are

commonly conducted as separate businesses in separate premises are conducted in separate departments of the same premises, each such department shall, for the purpose of this subsection be deemed to be a separate factory, establishment or other premises. For the purposes of this subsection, failure or refusal to cross a picket line or refusal for any reason during the continuance of such labor dispute to accept the individual's available and customary work at the factory, establishment or other premises where the individual is or was last employed shall be considered as participation and interest in the labor dispute.

(e) For any week with respect to which or a part of which the individual has received or is seeking unemployment benefits under the unemployment compensation law of any other state or of the United States, except that if the appropriate agency of such other state or the United States finally determines that the individual is not entitled to such unemployment benefits, this disqualification shall not apply.

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

(g) If the individual, or another in such individual's behalf with the knowledge of the individual, has knowingly made a false statement or representation, or has knowingly failed to disclose a material fact to obtain or increase benefits under this act or any other unemployment compensation law administered by the secretary of labor, unless the individual has repaid the full amount of the overpayment as determined by the secretary or the secretary's designee, including, but not limited to, the total amount of money erroneously paid as benefits or unlawfully obtained, interest, penalties and any other costs or fees provided by law. If the individual has

made such repayment, the individual shall be disqualified for a period of one year for the first occurrence or five years for any subsequent occurrence, beginning with the first day following the date the department of labor confirmed the individual has successfully repaid the full amount of the overpayment. In addition to the penalties set forth in K.S.A. 44-719, and amendments thereto, an individual who has knowingly made a false statement or representation or who has knowingly failed to disclose a material fact to obtain or increase benefits under this act or any other unemployment compensation law administered by the secretary of labor shall be liable for a penalty in the amount equal to 25% of the amount of benefits unlawfully received. Notwithstanding any other provision of law, such penalty shall be deposited into the employment security trust fund. No person who is a victim of identify theft shall be subject to the provisions of this subsection. The secretary shall investigate all cases of an alleged false statement or representation or failure to disclose a material fact to ensure no victim of identity theft is disqualified, required to repay or subject to any penalty as provided by this subsection as a result of identity theft.

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

(i) For any week of unemployment on the basis of service in an instructional, research or principal administrative capacity for an educational institution as defined in K.S.A. 44-703(v), and amendments thereto, if such week begins during the period between two successive academic years or terms or, when an agreement provides instead for a similar period between two regular but not successive terms during such period or during a period of paid sabbatical leave provided for in the individual's contract, if the individual performs such services in the first

of such academic years or terms and there is a contract or a reasonable assurance that such individual will perform services in any such capacity for any educational institution in the second of such academic years or terms.

(j) For any week of unemployment on the basis of service in any capacity other than service in an instructional, research, or administrative capacity in an educational institution, as defined in K.S.A. 44-703(v), and amendments thereto, if such week begins during the period between two successive academic years or terms if the individual performs such services in the first of such academic years or terms and there is a reasonable assurance that the individual will perform such services in the second of such academic years or terms, except that if benefits are denied to the individual under this subsection and the individual was not offered an opportunity to perform such services for the educational institution for the second of such academic years or terms, such individual shall be entitled to a retroactive payment of benefits for each week for which the individual filed a timely claim for benefits and for which benefits were denied solely by reason of this subsection.

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

(l) For any week of unemployment on the basis of any services, substantially all of which consist of participating in sports or athletic events or training or preparing to so participate, if such week begins during the period between two successive sport seasons or

similar period if such individual performed services in the first of such seasons or similar periods and there is a reasonable assurance that such individual will perform such services in the later of such seasons or similar periods.

(m) For any week on the basis of services performed by an alien unless such alien is an individual who was lawfully admitted for permanent residence at the time such services were performed, was lawfully present for purposes of performing such services, or was permanently residing in the United States under color of law at the time such services were performed, including an alien who was lawfully present in the United States as a result of the application of the provisions of section 212(d)(5) of the federal immigration and nationality act. Any data or information required of individuals applying for benefits to determine whether benefits are not payable to them because of their alien status shall be uniformly required from all applicants for benefits. In the case of an individual whose application for benefits would otherwise be approved, no determination that benefits to such individual are not payable because of such individual's alien status shall be made except upon a preponderance of the evidence.

(n) For any week in which an individual is receiving a governmental or other pension, retirement or retired pay, annuity or other similar periodic payment under a plan maintained by a base period employer and to which the entire contributions were provided by such employer, except that: (1) If the entire contributions to such plan were provided by the base period employer but such individual's weekly benefit amount exceeds such governmental or other pension, retirement or retired pay, annuity or other similar periodic payment attributable to such week, the weekly benefit amount payable to the individual shall be reduced, but not below zero, by an amount equal to the amount of such pension, retirement or retired pay, annuity or other similar periodic payment which is attributable to such week; or (2) if only a portion of

contributions to such plan were provided by the base period employer, the weekly benefit amount payable to such individual for such week shall be reduced, but not below zero, by the prorated weekly amount of the pension, retirement or retired pay, annuity or other similar periodic payment after deduction of that portion of the pension, retirement or retired pay, annuity or other similar periodic payment that is directly attributable to the percentage of the contributions made to the plan by such individual; or (3) if the entire contributions to the plan were provided by such individual, or by the individual and an employer, or any person or organization, who is not a base period employer, no reduction in the weekly benefit amount payable to the individual for such week shall be made under this subsection; or (4) whatever portion of contributions to such plan were provided by the base period employer, if the services performed for the employer by such individual during the base period, or remuneration received for the services, did not affect the individual's eligibility for, or increased the amount of, such pension, retirement or retired pay, annuity or other similar periodic payment, no reduction in the weekly benefit amount payable to the individual for such week shall be made under this subsection. No reduction shall be made for payments made under the social security act or railroad retirement act of 1974.

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

(p) For any week of unemployment on the basis of service as a school bus or other

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

(q) For any week of unemployment on the basis of services performed by the individual in any capacity and under any of the circumstances described in subsection (i), (j), (k) or (o) which are provided to or on behalf of an educational institution, as defined in K.S.A. 44-703(v), and amendments thereto, while the individual is in the employ of an employer which is a governmental entity, Indian tribe or any employer described in section 501(c)(3) of the federal internal revenue code of 1986 which is exempt from income under section 501(a) of the code.

(r) For any week in which an individual is registered at and attending an established school, training facility or other educational institution, or is on vacation during or between two successive academic years or terms. An individual shall not be disqualified for benefits as provided in this subsection provided:

(1) The individual was engaged in full-time employment concurrent with the individual's school attendance;

(2) the individual is attending approved training as defined in K.S.A. 44-703(s), and

amendments thereto; or

(3) the individual is attending evening, weekend or limited day time classes, which would not affect availability for work, and is otherwise eligible under K.S.A. 44-705(c), and amendments thereto.

(s) For any week with respect to which an individual is receiving or has received remuneration in the form of a back pay award or settlement. The remuneration shall be allocated to the week or weeks in the manner as specified in the award or agreement, or in the absence of such specificity in the award or agreement, such remuneration shall be allocated to the week or weeks in which such remuneration, in the judgment of the secretary, would have been paid.

(1) For any such weeks that an individual receives remuneration in the form of a back pay award or settlement, an overpayment will be established in the amount of unemployment benefits paid and shall be collected from the claimant.

(2) If an employer chooses to withhold from a back pay award or settlement, amounts paid to a claimant while they claimed unemployment benefits, such employer shall pay the department the amount withheld. With respect to such amount, the secretary shall have available all of the collection remedies authorized or provided in K.S.A. 44-717, and amendments thereto.

(t) (1) Any applicant for or recipient of unemployment benefits who tests positive for unlawful use of a controlled substance or controlled substance analog shall be required to complete a substance abuse treatment program approved by the secretary of labor, secretary of commerce or secretary for children and families, and a job skills program approved by the secretary of labor, secretary of commerce or the secretary for children and families. Subject to applicable federal laws, any applicant for or recipient of unemployment benefits who fails to complete or refuses to participate in the substance abuse treatment program or job skills program



as required under this subsection shall be ineligible to receive unemployment benefits until completion of such substance abuse treatment and job skills programs. Upon completion of both substance abuse treatment and job skills programs, such applicant for or recipient of unemployment benefits may be subject to periodic drug screening, as determined by the secretary of labor. Upon a second positive test for unlawful use of a controlled substance or controlled substance analog, an applicant for or recipient of unemployment benefits shall be ordered to complete again a substance abuse treatment program and job skills program, and shall be terminated from unemployment benefits for a period of 12 months, or until such applicant for or recipient of unemployment benefits completes both substance abuse treatment and job skills programs, whichever is later. Upon a third positive test for unlawful use of a controlled substance or controlled substance analog, an applicant for or a recipient of unemployment benefits shall be terminated from receiving unemployment benefits, subject to applicable federal law.

(2) Any individual who has been discharged or refused employment for failing a preemployment drug screen required by an employer may request that the drug screening specimen be sent to a different drug testing facility for an additional drug screening. Any such individual who requests an additional drug screening at a different drug testing facility shall be required to pay the cost of drug screening.

(u) If the individual was found not to have a disqualifying adjudication or conviction under K.S.A. 39-970 or 65-5117, and amendments thereto, was hired and then was subsequently convicted of a disqualifying felony under K.S.A. 39-970 or 65-5117, and amendments thereto, and discharged pursuant to K.S.A. 39-970 or 65-5117, and amendments thereto. The disqualification shall begin the day following the separation and shall continue until after the individual becomes reemployed and has had earnings from insured work of at least three times

the individual's determined weekly benefit amount.

(v) Notwithstanding the provisions of any subsection, an individual shall not be disqualified for such week of part-time employment in a substitute capacity for an educational institution if such individual's most recent employment prior to the individual's benefit year begin date was for a non-educational institution and such individual demonstrates application for work in such individual's customary occupation or for work for which the individual is reasonably fitted by training or experience.

Sec. 4. K.S.A. 44-709 is hereby amended to read as follows: 44-709. (a) *Filing.* Claims for benefits shall be made in accordance with rules and regulations adopted by the secretary. The secretary shall furnish a copy of such rules and regulations to any individual requesting them. Each employer shall: (1) Post and maintain printed statements furnished by the secretary without cost to the employer in places readily accessible to individuals in the service of the employer; and (2) provide any other notification to individuals in the service of the employer as required by the secretary pursuant to the families first coronavirus response act, public law 116-127.

(b) *Determination.* (1) Except as otherwise provided in this paragraph, a representative designated by the secretary, and hereinafter referred to as an examiner, shall promptly examine the claim and, on the basis of the facts found by the examiner, shall determine whether or not the claim is valid. If the examiner determines that the claim is valid, the examiner shall determine the first day of the benefit year, the weekly benefit amount and the total amount of benefits payable with respect to the benefit year. If the claim is determined to be valid, the examiner shall send a notice to the last employing unit who shall respond within 10 days by providing the examiner all requested information including all information required for a decision under K.S.A. 44-706, and amendments thereto. The information may be submitted by the employing

unit in person at an employment office of the secretary or by mail, by telefacsimile machine or by electronic mail. If the required information is not submitted or postmarked within a response time limit of 10 days after the examiner's notice was sent, the employing unit shall be deemed to have waived its standing as a party to the proceedings arising from the claim and shall be barred from protesting any subsequent decisions about the claim by the secretary, a referee, the employment security board of review or any court, except that the employing unit's response time limit may be waived or extended by the examiner or upon appeal, if timely response was impossible due to excusable neglect. In any case in which the payment or denial of benefits will be determined by the provisions of K.S.A. 44-706(d), and amendments thereto, the examiner shall promptly transmit the claim to a special examiner designated by the secretary to make a determination on the claim after the investigation as the special examiner deems necessary. The parties shall be promptly notified of the special examiner's decision and any party aggrieved by the decision may appeal to the referee as provided in subsection (c). The claimant and the claimant's most recent employing unit shall be promptly notified of the examiner's or special examiner's decision.

(2) The examiner may for good cause reconsider the examiner's decision and shall promptly notify the claimant and the most recent employing unit of the claimant, that the decision of the examiner is to be reconsidered, except that no reconsideration shall be made after the termination of the benefit year.

(3) Notwithstanding the provisions of any other statute, a decision of an examiner or special examiner shall be final unless the claimant or the most recent employing unit of the claimant files an appeal from the decision as provided in subsection (c), except that the time limit for appeal may be waived or extended by the referee or board of review if a timely response was

impossible due to excusable neglect. The appeal must be filed within 16 calendar days after the mailing of notice to the last known addresses of the claimant and employing unit or, if notice is not by mail, within 16 calendar days after the delivery of the notice to the parties.

(c) *Appeals.* Unless the appeal is withdrawn, a referee, after affording the parties reasonable opportunity for fair hearing, shall affirm or modify the findings of fact and decision of the examiner or special examiner. The parties shall be duly notified of the referee's decision, together with the reasons for the decision. The decision shall be final, notwithstanding the provisions of any other statute, unless a further appeal to the employment security board of review is filed within 16 calendar days after the mailing of the decision to the parties' last known addresses or, if notice is not by mail, within 16 calendar days after the delivery of the decision, except that the time limit for appeal may be waived or extended by the referee or board of review if a timely response was impossible due to excusable neglect.

(d) *Referees.* The secretary shall appoint, in accordance with K.S.A. 44-714(c), and amendments thereto, one or more referees to hear and decide disputed claims.

(e) *Time, computation and extension.* In computing the period of time for an employing unit response or for appeals under this section from the examiner's or the special examiner's determination or from the referee's decision, the day of the act, event or default from which the designated period of time begins to run shall not be included. The last day of the period shall be included unless it is a Saturday, Sunday or legal holiday, in which event the period runs until the end of the next day that is not a Saturday, Sunday or legal holiday.

(f) *Board of review.* There is hereby created an employment security board of review, hereinafter referred to as the board.

(1) (A) Except as provided in subparagraph (B), the board shall consist of three

members. Each member of the board shall be appointed for a term of four years as provided in this subsection. Not more than two members of the board shall belong to the same political party.

(B) On the effective date of this act, the board shall consist of six members. The six-member board shall consist of the following: (i) Three members appointed under subparagraph (A); and (ii) three members appointed for a term that shall expire upon the expiration of this subparagraph. Each member of the board appointed under subparagraph (B)(ii) shall be appointed as provided in this subsection. Not more than four members of the six-member board shall belong to the same political party. The provisions of this subparagraph shall expire on June 30, 2024.

(2) When a vacancy on the employment security board of review occurs, the workers compensation and employment security boards nominating committee established under K.S.A. 44-551, and amendments thereto, shall convene and submit a nominee to the governor for appointment to each vacancy on the employment security board of review, subject to confirmation by the senate as provided by K.S.A. 75-4315b, and amendments thereto. The governor shall either: (A) Accept and submit to the senate for confirmation the person nominated by the nominating committee; or (B) reject the nomination and request the nominating committee to nominate another person for that position. Except as provided by K.S.A. 46-2601, and amendments thereto, no person appointed to the employment security board of review, whose appointment is subject to confirmation by the senate, shall exercise any power, duty or function as a member until confirmed by the senate.

(3) No member of the employment security board of review shall serve more than two consecutive terms. This paragraph shall not apply to members of the board appointed under subsection (f)(1)(B)(ii). The service of a board member appointed under subsection (f)(1)(B)(ii)

shall not constitute a term as contemplated in this paragraph.

(4) Each member of the employment security board shall serve until a successor has been appointed and confirmed. Any vacancy in the membership of the board occurring prior to expiration of a term shall be filled by appointment for the unexpired term in the same manner as provided for original appointment of the member.

(5) Each member of the employment security board of review shall be entitled to receive as compensation for the member's services at the rate of \$15,000 per year, together with the member's travel and other necessary expenses actually incurred in the performance of the member's official duties in accordance with rules and regulations adopted by the secretary. Members' compensation and expenses shall be paid from the employment security administration fund.

(6) The employment security board of review shall organize annually by the election of a chairperson from among its members. The chairperson shall serve in that capacity for a term of one year and until a successor is elected. For the purpose of hearing and determining cases, the board members may sit in panels. A board panel shall consist of three members with not more than two members belonging to the same political party. The chairperson may sit as a member of a panel and shall preside over such panel. When the chairperson is not a member of a hearing panel, the chairperson shall appoint a member of the panel to preside. The board or board panel shall meet on the first Monday of each month or on the call of the chairperson or any two members of the board at the place designated. The secretary of labor shall appoint an executive secretary of the board and the executive secretary or the executive secretary's designee shall attend the meetings of the board and board panels.

(7) The employment security board of review or board panel, on its own motion, may

affirm, modify or set aside any decision of a referee on the basis of the evidence previously submitted in the case; may direct the taking of additional evidence; or may permit any of the parties to initiate further appeal before it. The board or board panel shall permit such further appeal by any of the parties interested in a decision of a referee that overrules or modifies the decision of an examiner. The board or board panel may remove to itself the proceedings on any claim pending before a referee. Any proceedings so removed to the board or board panel shall be heard in accordance with the requirements of subsection (c). The board or board panel shall promptly notify the interested parties of its findings and decision.

(8) A simple majority of the members of the employment security board of review or board panel shall constitute a quorum and no action of the board or board panel shall be valid unless it has the concurrence of a majority of its members. A vacancy on the board shall not impair the right of a quorum to exercise all the rights and perform all the duties of the board.

(g) *Procedure.* The manner that disputed claims are presented, the reports on claims required from the claimant and from employers and the conduct of hearings and appeals shall be in accordance with rules of procedure prescribed by the employment security board of review for determining the rights of the parties, whether or not such rules conform to common law or statutory rules of evidence and other technical rules of procedure. A full and complete record shall be kept of all proceedings and decisions in connection with a disputed claim. All testimony at any hearing upon a disputed claim shall be recorded, but need not be transcribed unless the disputed claim is further appealed. In the performance of its official duties, the board or board panel shall have access to all of the records that pertain to the disputed claim and are in the custody of the secretary of labor and shall receive the assistance of the secretary upon request.

(h) *Witness fees.* Witnesses subpoenaed pursuant to this section shall be allowed fees

and necessary travel expenses at rates fixed by the board. Such fees and expenses shall be deemed a part of the expense of administering this act.

(i) *Review of board action.* Any action of the employment security board of review including that of a board panel, may not be reconsidered after the mailing of the decision. An action of the board or board panel shall become final unless a petition for review in accordance with the Kansas judicial review act is filed within 16 calendar days after the date of the mailing of the decision. If an appeal has not been filed within 16 calendar days of the date of the mailing of the decision, the decision becomes final. No bond shall be required for commencing an action for such review. In addition to those persons having standing pursuant to K.S.A. 77-611, and amendments thereto, the examiner shall have standing to obtain judicial review of an action of such board or board panel. The review proceeding, and the questions of law certified, shall be heard in a summary manner and shall be given precedence over all other civil cases except cases arising under the workers compensation act.

(j) Any finding of fact or law, judgment, determination, conclusion or final order made by the employment security board of review or board panel or any examiner, special examiner, referee or other person with authority to make findings of fact or law pursuant to the employment security law is not admissible or binding in any separate or subsequent action or proceeding, between a person and a present or previous employer brought before an arbitrator, court or judge of the state or the United States, regardless of whether the prior action was between the same or related parties or involved the same facts.

(k) In any proceeding or hearing conducted under this section, a party to the proceeding or hearing may appear before a referee or the employment security board of review or board panel either personally or by means of a designated representative to present evidence and to



state the position of the party. Hearings may be conducted in person, by telephone or other means of electronic communication. The hearing shall be conducted by telephone or other means of electronic communication if none of the parties requests an in-person hearing. If a party requests an in-person hearing, the referee or board or board panel shall have the discretion to deny the request in the absence of good cause shown for the request by the requesting party. If a request for an in-person hearing is granted, the referee or board or board panel shall have the discretion to require all parties to appear in person or allow the party not requesting an in-person hearing to appear by telephone or other means of electronic communication. The notice of hearing shall include notice to the parties of their right to request an in-person hearing and instructions on how to make the request.

(1) (1) Notwithstanding the time limitations of this section, the provisions of K.S.A. 44-706 in effect prior to the effective date of this act, or any other provision of the employment security law, a claimant upon request shall be retroactively paid benefits for any week that the claimant would otherwise have been eligible for such benefits, if such claimant was disqualified from receiving such benefits during the period of September 9, 2021, through the effective date of this act on the grounds that the claimant voluntarily left employment without good cause or was discharged or suspended for misconduct as the result of the claimant's refusal to comply with a COVID-19 vaccine requirement after the individual requested an exemption or accommodation from such requirement provided by state or federal law and such request was denied.

(2) The secretary shall independently review any claims denied during the period of September 9, 2021, through the effective date of this act because the claimant was disqualified from receiving benefits on the grounds that the claimant voluntarily left employment without

good cause or was discharged or suspended for misconduct as the result of the claimant's refusal to comply with a COVID-19 vaccine requirement after the individual requested an exemption or accommodation from such requirement provided by state or federal law and such request was denied. In the event that the claimant has not requested retroactive payment of such benefits as provided by paragraph (1), the secretary shall retroactively pay benefits to such claimant for any week that the claimant would otherwise have been eligible for such benefits.

(3) The claimant or the employer may appeal an award or denial of benefits made pursuant to this subsection as provided in subsection (c).

(4) The secretary shall develop and implement procedures to enable claimants to retroactively substantiate and file claims under this subsection.

Sec. 5. K.S.A. 44-703, 44-705, 44-706 and 44-709 are hereby repealed.

Sec. 6. This act shall take effect and be in force from and after its publication in the Kansas register.

AN ACT concerning civil actions and civil procedure; authorizing a civil action for damages caused by an adverse reaction or injury related to a COVID-19 vaccine.

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

Section 1. (a) An individual may bring a civil action in an appropriate district court against an employer or other person for any damages caused by an adverse reaction or injury related to a COVID-19 vaccine if:

(1) The employer or other person imposed a COVID-19 vaccine requirement on such individual; and

(2) the individual complied with the requirement and received a COVID-19 vaccine as a result of such requirement.

(b) In an action under this section, the court shall award a prevailing plaintiff the cost of the suit, including reasonable attorney fees.

(c) As used in this section:

(1) "COVID-19 vaccine" means an immunization, vaccination or injection against disease caused by the novel coronavirus identified as SARS-CoV-2 or disease caused by a variant of the virus;

(2) "COVID-19 vaccine requirement" means that an employer or other person required the individual to receive a COVID-19 vaccine or required the individual to provide documentation certifying receipt of a COVID-19 vaccine. "COVID-19 vaccine requirement" does not include a requirement that was imposed to conform to requirements issued by a governmental entity.

(3) "employer" means any person in this state who employs one or more persons and

includes the state and all political subdivisions of the state; and

(4) "person" means an individual, partnership, association, organization, corporation, legal representative, trustee, trustee in bankruptcy or receiver.

Sec. 2. This act shall take effect and be in force from and after its publication in the Kansas register.