

**CHAPTER 5****(HB 5)**

AN ACT relating to unemployment insurance.

*Be it enacted by the General Assembly of the Commonwealth of Kentucky:*

➔Section 1. KRS 341.030 is amended to read as follows:

- (1) As used in this chapter, unless the context clearly requires otherwise, and except as provided in subsections (2) to (7) of this section, "wages" means all remuneration for services, including commissions, bonuses, and, except for services performed in agriculture and domestic employment, the cash value of all remuneration 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 prescribed by the commission.
- (2) Amounts paid to traveling salesmen or other workers as allowance or reimbursement for traveling or other expenses, incurred on the business of the employing unit, constitute wages only to the extent of the excess of the amounts over the expenses actually incurred and accounted for by the worker to his employer; provided, however, that the cash value of meals and lodging when furnished to the worker for the convenience of the employer shall not constitute wages.
- (3) For purposes of this chapter, the term "wages" includes tips which are:
  - (a) Received while performing services which constitute employment; and
  - (b) Included in a written statement furnished to the employer pursuant to Section 6053(a) of the Internal Revenue Code; and
  - (c) Shall be treated as having been paid by the employing unit.
- (4) "Wages" does not include the amount of any payment made to, or on behalf of, a worker under a plan or system established by an employing unit that makes provision for its workers generally or for a class of its workers, including any amount paid by an employing unit for insurance or annuities, or into a fund, to provide for any such payment, on account of:
  - (a) Retirement;
  - (b) Sickness or accident disability but, in the case of payments made to an employee or any of his dependents, this subsection shall exclude from the term "wages" only payments which are received under a workers' compensation law;
  - (c) Medical and hospitalization expenses in connection with accident or sickness disability; or
  - (d) Death, if the worker has not:
    1. The option to receive, instead of provision for the death benefit, any part of the payment, or if the death benefit is insured, any part of the premiums or contributions to premiums paid by his employing unit; and
    2. The right, under the provisions of the plan or system or policy of insurance providing for the death benefit, to assign the benefit, or to receive a cash consideration in lieu of it either upon his withdrawal from the plan or system providing for the benefit or upon termination of the plan or system or policy of insurance or of his employment with his employing unit.
- (5) "Wages" does not include 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 (6) calendar months following the last calendar month in which the employee worked for the employer.
- (6) "Wages" does not include the amount of any payment made by an employing unit without deduction from the remuneration of the worker of the tax imposed under Section 3101 of the Internal Revenue Code or any payment required from an employer under a state unemployment compensation law with respect to remuneration paid to an employee for domestic service in a private home of the employer or for agricultural labor.

- (7) "Wages" does not, for the purposes of KRS 341.260 to 341.310, include that part of remuneration which, after wages equal to eight thousand dollars (\$8,000) have been paid in a calendar year to a worker by a subject employer or his predecessor with respect to covered employment during any calendar year, is paid to the worker by the subject employer during the calendar year unless that part of the wages is subject to a tax under a federal law, imposing a tax against which credit may be taken for contributions required to be paid into a state unemployment fund. ***On January 1, 2012, the amount of eight thousand dollars (\$8,000) in this subsection shall increase to nine thousand dollars (\$9,000), which shall increase by an additional three hundred dollars (\$300) on January 1 of each subsequent year to 2022, not to exceed twelve thousand dollars (\$12,000).*** For the purpose of this subsection, the term "covered employment" shall include service constituting covered employment under any unemployment compensation law of another state.

➔Section 2. KRS 341.090 is amended to read as follows:

As used in this chapter, unless the context clearly requires otherwise:

- (1) "Base period" means the first four (4) of the last five (5) completed calendar quarters immediately preceding the first day of a worker's benefit year. However, if an individual lacks sufficient base-period wages because of a job-related injury, and he has received or was eligible to receive workers' compensation, upon written application by the claimant an extended base period will be substituted for the current base period on a quarter-by-quarter basis as needed to establish a valid claim or to increase the benefit rate of a claim if:
- The individual did not earn wages because of a job-related injury for at least seven (7) weeks of each base period quarter to be substituted by an extended base period quarter;
  - No later than one (1) month prior to the expiration of workers' compensation benefits, the employer or carrier shall inform, orally and in writing, all recipients of their potential eligibility for unemployment insurance, and also provide a statement verifying the individual's eligibility for workers' compensation; and
  - A claim for unemployment insurance compensation is filed no later than the fourth week of unemployment after the end of the period of injury compensated or eligible to be compensated by workers' compensation.
- (2) "Extended base period" means the four (4) quarters prior to the claimant's base period. These four (4) quarters may be substituted for base-period quarters on a quarter-for-quarter basis in order to establish a valid claim or increase the benefit rate of a valid claim regardless of whether the wages have been used to establish a prior claim, except wages transferred to or from another state under a combined wage agreement will be excluded if used in a prior claim. Benefits paid on the basis of an extended base period, which would not otherwise be payable, shall be charged to the pooled account if the chargeable employer is a contributing employer. If the chargeable employer is a reimbursing employer, benefits shall be billed to his reimbursing account.
- (3) "Benefit year" for any worker means the fifty-two (52) week period beginning with the first day of the week with respect to which he first requests a determination which establishes his status as a fully insured worker after the termination of his last preceding benefit year, if any, except that the last preceding benefit year shall be a fifty-three (53) week period if fifty-two (52) weeks would result in the overlapping of any calendar quarter of the base period of the new benefit year with the same calendar quarter of the base period of the previous benefit year. As used in this subsection, a worker shall be considered as having insured status, without regard to any other provision of this chapter, if at the time of his request he has satisfied the conditions required under ~~subsection (5) of~~ KRS 341.350(6).
- (4) "Base-period wages" means the wages paid to a worker during his base period by subject employers for covered employment. The secretary, upon request of the employee, with respect to this subsection, shall consider wages payable to mean wages paid in order to prevent inequities caused by employer failure to meet a regularly scheduled payday. Lump-sum payments deemed to be wages under this chapter shall be reallocated to periods covered by the payments.

➔Section 3. KRS 341.096 is amended to read as follows:

As used in this chapter, unless the context clearly requires otherwise:

- (1) "Rate of insured unemployment" means the percentage derived by dividing:
- The ~~average~~ weekly ***average*** number of ***weeks claimed in claims filed*** ~~[workers filing claims]~~ for regular benefits (***not seasonally adjusted***) in this state for weeks of unemployment with respect to the

most recent 13-consecutive-week period, as determined by the secretary on the basis of his report to the United States Secretary of Labor, by

- (b) The average monthly employment covered under this chapter for the first four (4) of the most recent six (6) completed calendar quarters ending before the end of such 13-week period. Such computations shall be made by the secretary, in accordance with regulations prescribed by the United States Secretary of Labor.
- (2) "Regular benefits" means benefits payable to a worker under this chapter or under an unemployment compensation law of any other state (including benefits payable to federal civilian employees and to ex-servicemen pursuant to 5 U.S.C. ch. 85) other than extended benefits and additional benefits.
- (3) "Extended benefits" means benefits (including benefits payable to federal civilian employees and to ex-servicemen pursuant to 5 U.S.C. ch. 85) payable to a worker under the provisions of KRS 341.700 to 341.740 for weeks of unemployment in his eligibility period.
- (4) "Additional benefits" means benefits payable to exhaustees by reason of conditions of high unemployment or by reason of other special factors under the provisions of any state law.
- (5) "Eligibility period" of a worker means the period consisting of the weeks in his benefit year which begin in an extended benefit period and, if his benefit year ends within such extended benefit period, any weeks thereafter which begin in such period.
- (6) "Exhaustee" means a worker who, with respect to any week of unemployment in his eligibility period:
  - (a) Has received, prior to such week, all of the regular benefits that were available to him under this chapter or any other state law (including dependents' allowances and benefits payable to federal civilian employees and ex-servicemen under 5 U.S.C. ch. 85) in his current benefit year that includes such week; provided, that, for the purposes of this paragraph, an individual shall be deemed to have received all of the regular benefits that were available to him although, as a result of a pending appeal with respect to wages and/or employment that were not considered in the original monetary determination in his benefit year, he may subsequently be determined to be entitled to added regular benefits; or
  - (b) His benefit year having expired prior to such week, has no, or insufficient, wages and/or employment on the basis of which he could establish a new benefit year that would include such week; and
  - (c) Has no right to unemployment benefits or allowances, as the case may be, under the Railroad Unemployment Insurance Act or under such other federal laws as are specified in regulations issued by the United States Secretary of Labor; and has not received and is not seeking unemployment benefits under the unemployment compensation law of Canada; but if the individual is seeking such benefits and the appropriate agency finally determines that the individual is not entitled to benefits under such law, the individual shall be considered an exhaustee if the other provisions of this definition are met.

➔Section 4. KRS 341.270 is amended to read as follows:

- (1) Except as otherwise provided in this section, each employer's contribution rate shall be three percent (3%). Effective for employers who become subject to this chapter on or after January 1, 1999, except as otherwise provided in this section, each employer's contribution rate shall be two and seven-tenths percent (2.7%).
- (2) Except as otherwise provided in this section, no subject employer's contribution rate shall be less than two and seven-tenths percent (2.7%), unless he has been an employer subject to the provisions of this chapter for twelve (12) consecutive calendar quarters ended as of the computation date. In any calendar year in which the rate schedule prescribed in paragraph (3)(a) of this section is in effect, no subject employer who was assigned an entry rate of three percent (3.0%) under the provisions of subsection (1) of this section prior to January 1, 1999, shall have a contribution rate less than two and eight hundred fifty-seven thousandths percent (2.857%), unless subject to this chapter for the minimum time period specified above.
- (3) For the calendar year 2001 and each calendar year thereafter, employer contribution rates shall be determined in accordance with "Table A" set out in subsection (4) of this section. For each calendar year, the secretary shall determine the rate schedule to be in effect based upon the "trust fund balance" as of **September 30**~~December 31~~ of the preceding year. If the "trust fund balance":

- (a) Equals or exceeds one and eighteen hundredths percent (1.18%) of the total wages paid in covered employment in the state during the state fiscal year ended as of June 30 of that year, the rates listed in the "Trust Fund Adequacy Rates" schedule of "Table A" shall be in effect.
- (b) Equals or exceeds *five hundred million dollars (\$500,000,000)*~~three hundred fifty million dollars (\$350,000,000)~~ but is less than the amount required to effectuate the "Trust Fund Adequacy Rates" schedule as provided in paragraph (a) of this subsection, the rates listed in "Schedule A" of "Table A" shall be in effect.
- (c) Equals or exceeds *three hundred fifty million dollars (\$350,000,000)*~~two hundred seventy five million dollars (\$275,000,000)~~ but is less than *five hundred million dollars (\$500,000,000)*~~three hundred fifty million dollars (\$350,000,000)~~, the rates listed in "Schedule B" of "Table A" shall be in effect.
- (d) Equals or exceeds two hundred fifty million dollars (\$250,000,000) but is less than *three hundred fifty million dollars (\$350,000,000)*~~two hundred seventy five million dollars (\$275,000,000)~~, the rates listed in "Schedule C" of "Table A" shall be in effect.
- (e) Equals or exceeds one hundred fifty million dollars (\$150,000,000) but is less than two hundred fifty million dollars (\$250,000,000), the rates listed in "Schedule D" of "Table A" shall be in effect.
- (f) Is less than one hundred fifty million dollars (\$150,000,000), the rates listed in "Schedule E" of "Table A" shall be in effect.
- (4) For the calendar year 1982 and each calendar year thereafter, contribution rates shall be determined upon the basis of an individual employer's reserve ratio as of the computation date and the schedule of rates established under subsection (3) of this section. Except as otherwise provided in this section, the contribution rate for each subject employer for the calendar year immediately following the computation date shall be the rate in that "Schedule" of "Table A," as set out below, effective with respect to the calendar year, which appears on the same line as his reserve ratio as shown in the "Employer Reserve Ratio" column of the same table.

TABLE A  
Rate Schedule

Employer Reserve Ratio	Trust Fund Adequacy Rates	A	B	C	D	E
8.0% and over	0.000%	0.30%	0.40%	0.50%	0.60%	1.00%
7.0% but under 8.0%	0.000%	0.40%	0.50%	0.60%	0.80%	1.05%
6.0% but under 7.0%	0.008%	0.50%	0.60%	0.70%	0.90%	1.10%
5.0% but under 6.0%	0.208%	0.70%	0.80%	1.00%	1.20%	1.40%
4.6% but under 5.0%	0.508%	1.00%	1.20%	1.40%	1.60%	1.80%
4.2% but under 4.6%	0.808%	1.30%	1.50%	1.80%	2.10%	2.30%
3.9% but under 4.2%	1.008%	1.50%	1.70%	2.20%	2.40%	2.70%
3.6% but						

under 3.9%	1.308%	1.80%	1.80%	2.40%	2.60%	3.00%
3.2% but						
under 3.6%	1.508%	2.00%	2.10%	2.50%	2.70%	3.10%
2.7% but						
under 3.2%	1.608%	2.10%	2.30%	2.60%	2.80%	3.20%
2.0% but						
under 2.7%	1.708%	2.20%	2.50%	2.70%	2.90%	3.30%
1.3% but						
under 2.0%	1.808%	2.30%	2.60%	2.80%	3.00%	3.40%
0.0% but						
under 1.3%	1.908%	2.40%	2.70%	2.90%	3.10%	3.50%
-0.5% but						
under -0.0%	6.500%	6.50%	6.75%	7.00%	7.25%	7.50%
-1.0% but						
under -0.5%	6.750%	6.75%	7.00%	7.25%	7.50%	7.75%
-1.5% but						
under -1.0%	7.000%	7.00%	7.25%	7.50%	7.75%	8.00%
-2.0% but						
under -1.5%	7.250%	7.25%	7.50%	7.75%	8.00%	8.25%
-3.0% but						
under -2.0%	7.500%	7.50%	7.75%	8.00%	8.25%	8.50%
-4.0% but						
under -3.0%	7.750%	7.75%	8.00%	8.25%	8.50%	8.75%
-6.0% but						
under -4.0%	8.250%	8.25%	8.50%	8.75%	9.00%	9.25%
-8.0% but						
under -6.0%	8.500%	8.50%	8.75%	9.00%	9.25%	9.50%
Less						
than -8.0%.	9.000%	9.00%	9.25%	9.50%	9.75%	10.00%

(5) As used in this section and elsewhere in this chapter, unless the context clearly requires otherwise:

- (a) "Trust fund balance" means the amount of money in the unemployment insurance fund, less any unpaid advances made to the state under Section 1201 of the Social Security Act. In determining the amount in the fund as of a given date all money received by the Office of Employment and Training, Department of Workforce Investment, on that date shall be considered as being in the fund on that date;
- (b) "Total wages" means all remuneration for services, as defined in KRS 341.030(1) to (7), paid by subject employers;
- (c) An employer's "reserve ratio" means the percentage ratio of his reserve account balance as of the computation date to his taxable payrolls for the twelve (12) consecutive calendar quarters ended as of **June 30** ~~(September 30)~~ immediately preceding the computation date;

- (d) For the purposes of this section, an employer's "reserve account balance" means the amount of contributions credited to his reserve account as of the computation date, less the benefit charges through **June 30**~~September 30~~ immediately preceding the computation date. If benefits charged to an account exceed contributions credited to the account, the account shall be considered as having a debit balance and a reserve ratio of "less than zero"; and
- (e) "Computation date" is **July 31**~~October 31~~ of each calendar year prior to the effective date of new rates of contributions.

➔Section 5. KRS 341.272 is amended to read as follows:

- (1) Notwithstanding any section of this chapter to the contrary, on or after July 15, 1984, any new domestic corporation, or any foreign corporation authorized to do business in this state, or any foreign corporation active in conjunction with a domestic corporation in a joint venture, partnership or other legal entity engaged in the contract construction trades shall pay contributions equal to the maximum rate of contributions payable under the rate schedule in effect for any given calendar year as determined by KRS 341.270; and, such maximum rate of contributions shall remain in effect until the employer has employed persons in this state for not less than twelve (12) consecutive calendar quarters ending as of **June 30**~~September 30~~ immediately preceding the computation date. Thereafter, such employer's contribution rate shall be determined in accordance with the provisions of subsection (4) of KRS 341.270.
- (2) On or after January 1, 1989, any new domestic or foreign proprietorship or partnership engaged in the contract construction trades shall be subject to the provisions of subsection (1) of this section.

➔Section 6. KRS 341.275 is amended to read as follows:

- (1) For the purpose of this section, a nonprofit organization is an organization (or group of organizations) described in Section 501(c)(3) of the United States Internal Revenue Code which is exempt from income tax under Section 501(a) of such code. For the purpose of this section, "cabinet" shall mean the Education and Workforce Development Cabinet and "secretary" shall mean the secretary of the Education and Workforce Development Cabinet.
- (2) Any nonprofit organization which, pursuant to KRS 341.070(4), is, or becomes, a subject employer shall pay contributions under the provisions of KRS 341.270, unless it elects, in accordance with this section, to pay to the cabinet for the fund an amount equal to the amount of regular benefits and of one-half (1/2) of the extended benefits paid to workers for weeks of unemployment that is attributable to service in the employ of the nonprofit organization, performed during the effective period of the election but only if the employer is the worker's most recent employer. No employer shall be deemed to be the most recent employer unless the eligible worker to whom benefits are payable shall have worked for that employer in each of ten (10) weeks whether or not consecutive.
- (a) Any nonprofit organization which is, or becomes, a subject employer on July 1, 1972, may elect to become liable for payments in lieu of contributions for a period of not less than the remainder of 1972 and the calendar year of 1973, provided it files with the cabinet a written notice of its election within the thirty (30) day period immediately following such date.
- (b) Any nonprofit organization which becomes a subject employer after July 1, 1972, may elect to become liable for payments in lieu of contributions for a period of not less than the period of subjectivity during the year in which such subjectivity begins and the following calendar year by filing a written notice of its election with the cabinet not later than thirty (30) days immediately following the date of the determination of such subjectivity.
- (c) Any nonprofit organization which makes an election in accordance with paragraph (a) or paragraph (b) of this subsection will continue to be liable for payments in lieu of contributions until it files with the secretary a written notice terminating its election not later than thirty (30) days prior to the beginning of the calendar year for which such termination shall first be effective, except that liability for payments in lieu of contributions shall continue thereafter with respect to wages paid prior to the effective date of such termination.
- (d) Any nonprofit organization which has been paying contributions under this chapter for a period subsequent to July 1, 1972, may change to a reimbursable basis by filing with the cabinet not later than thirty (30) days prior to the beginning of any calendar year a written notice of election to become liable

for payments in lieu of contributions. Such election shall not be terminable by such organization for that and the following year.

- (e) The secretary may for good cause extend the period within which a notice of election, or a notice of termination, must be filed and may permit an election to be retroactive but not any earlier than with respect to benefits paid after December 31, 1969.
  - (f) The secretary shall notify each nonprofit organization of any determination which may be made of its status as an employer and of the effective date of any election which it makes and of any termination of such election. Such determinations shall be subject to appeal and review in accordance with the provisions of KRS 341.430(2).
- (3) Payments in lieu of contributions shall be made in accordance with the provisions of this subsection.
- (a) At the end of each calendar quarter *or at the end of any other period as determined by the secretary*, the cabinet shall bill each nonprofit organization (or group of such organizations) which has elected to make payments in lieu of contributions for an amount equal to the full amount of regular benefits plus one-half (1/2) of the amount of extended benefits paid during such quarter plus any prior period adjustments, which are attributable to service performed in covered employment in the employ of such organization *plus interest on the total amount billed at the average rate of earnings in the unemployment insurance fund for the prior calendar year. All interest collected under this subsection shall be credited to the unemployment insurance fund.*
  - (b) Payment of any bill rendered under paragraph (a) shall be made not later than thirty (30) days after such bill was mailed to the last known address of the nonprofit organization or was otherwise delivered to it, unless there has been an application for review in accordance with paragraph (d) of this subsection.
  - (c) Payments made by any nonprofit organization under the provisions of this subsection shall not be deducted or deductible, in whole or in part, from the remuneration of workers in the employ of the organization.
  - (d) The amount due specified in any bill from the secretary shall be conclusive on the organization unless, not later than fifteen (15) days after the bill was mailed to its last known address or otherwise delivered to it, the organization files an appeal to the commission setting forth the grounds for such appeal. Proceedings on appeal to the commission from the amount of a bill rendered under this subsection shall be in accordance with the provisions of KRS 341.430, and the decision of the commission shall be subject to review under the provisions of KRS 341.460(1).
  - (e) Past-due payments of amounts in lieu of contributions shall be subject to the same interest, penalties, collection service, and lien provisions that, pursuant to KRS 341.300 to 341.310, apply to past-due contributions.
- (4) (a) The secretary may, in accordance with regulations prescribed by the cabinet, require any nonprofit organization that elects to become liable for payments in lieu of contributions to deposit with the cabinet, within thirty (30) days after the effective date of its election as a condition thereof, money equal to two percent (2%) of the organization's total wages paid for employment as defined in KRS 341.050(1)(e) for the four (4) calendar quarters immediately preceding the effective date of such election. If the nonprofit organization did not pay wages in each of such four (4) calendar quarters, the amount of the deposit shall be as determined by the secretary.
- (b) Money deposited in accordance with this subsection shall be retained by the cabinet in an escrow account until all possible liability to the fund under the election is terminated, at which time it shall be returned to the organization, less any deductions as hereinafter provided. The cabinet may deduct from the money deposited under this subsection by a nonprofit organization to the extent necessary to satisfy any due and unpaid payments in lieu of contributions and any applicable interest and penalties provided for in subsection (3)(e) of this section. The secretary shall require the organization within thirty (30) days following any deduction from a money deposit under the provisions of this subsection to deposit sufficient additional money to make whole the organization's deposit at the prior level. The secretary may, at any time, review the adequacy of the deposit made by any organization. If, as a result of such review, he determines that an adjustment is necessary, he shall require the organization to make additional deposit within thirty (30) days of written notice of his determination or shall return to it such portion of the deposit as he no longer considers necessary, whichever action is appropriate.

(c) If any nonprofit organization fails to make a deposit, or to increase or make whole the amount of a previously made deposit, as provided under this subsection, the secretary may terminate such organization's election to make payments in lieu of contributions and such termination shall continue for not less than the remainder of that calendar year and the following calendar year beginning with the quarter in which such termination becomes effective; provided, that the secretary may extend for good cause the applicable filing, deposit, or adjustment period by not more than sixty (60) days.

(5) If any nonprofit organization is delinquent in making payments in lieu of contributions as required under subsection (3) of this section, the secretary may terminate such organization's election to make payments in lieu of contributions as of the beginning of the next calendar year, and such termination shall be effective for that and the next calendar year.

(6) Notwithstanding any other section of this chapter, no employing unit electing to make payments in lieu of contributions under the provisions of this section shall be entitled to relief of benefit charges.

➔Section 7. KRS 341.277 is amended to read as follows:

(1) Any governmental entity which, pursuant to KRS 341.070(3), is or becomes a subject employer shall pay contributions under the provisions of KRS 341.270, unless it elects, in accordance with this section, to pay the cabinet for the fund an amount equal to the amount of all regular benefits plus all extended benefits paid to workers for compensable weeks of unemployment occurring on or after January 1, 1979, and for all regular benefits and one-half (1/2) of extended benefits paid to workers for compensable weeks of unemployment occurring prior to such date that is attributable to service performed in covered employment in the employ of such governmental entity during the effective period of such election but only if the employer is the worker's most recent employer. No employer shall be deemed to be the most recent employer unless the eligible worker to whom benefits are payable shall have worked for that employer in each of ten (10) weeks whether or not consecutive.

(a) Any governmental entity, which is or becomes a subject employer, may elect to become liable for payment in lieu of contributions for a period of not less than the calendar year in which such subjectivity begins and for the following calendar year provided it files with the cabinet a written notice of its election within thirty (30) days immediately following the date of the determinations of such subjectivity; or

(b) Any governmental entity which has paid contributions under the provisions of KRS 341.270 may change to a reimbursable basis by filing with the cabinet a written notice of its election not later than thirty (30) days prior to the beginning of any calendar year to make payments in lieu of contributions for a period of not less than two (2) calendar years following the effective date of such election.

(c) Any governmental entity which elects to make payments in lieu of contributions, in accordance with paragraphs (a) or (b) of this subsection, shall continue to be liable for payments in lieu of contributions until it files with the secretary a written notice terminating its election not later than thirty (30) days prior to the beginning of the calendar year for which such termination shall become effective except that liability for payments in lieu of contributions shall continue thereafter with respect to wages paid prior to the effective date of such termination.

(d) The secretary may for good cause extend the period within which a notice of election must be filed and may permit the effective date of such election to be retroactive.

(e) The secretary shall notify each governmental entity of any determination made as to its status as a subject employer, pursuant to KRS 341.070 and the effective date of any election or termination made pursuant to this subsection which determinations shall be subject to appeal and review in accordance with the provisions of KRS 341.430(2).

(2) Payment in lieu of contributions shall be made in accordance with the provisions of this subsection.

(a) At the end of each *calendar* quarter ***or at the end of any other period as determined by the secretary***, the cabinet shall bill each governmental entity (or group of governmental entities) which has elected to make payments in lieu of contributions an amount equal to all regular benefits and all extended benefits paid during such quarter for compensable weeks occurring on or after January 1, 1979, plus any prior period adjustments which are attributable to service performed in covered employment in the employ of such governmental entity ***plus interest on the total amount billed at the average rate of earnings in the***



*unemployment insurance fund for the prior calendar year. All interest collected under this subsection shall be credited to the unemployment insurance fund.*

- (b) Payment of any bill rendered under paragraph (a) shall be made not later than thirty (30) days after such bill was mailed to the last known address of the governmental entity or was otherwise delivered to it, unless there has been an application for review in accordance with paragraph (d) of this subsection.
  - (c) Payments made by any governmental entity under the provisions of this subsection shall not be deducted or deductible, in whole or in part, from the remuneration of workers in the employ of the governmental entity.
  - (d) The amount due specified in any bill from the secretary shall be conclusive on the governmental entity unless, not later than fifteen (15) days after the bill was mailed to its last known address or otherwise delivered to it, the governmental entity files an appeal to the commission, setting forth the grounds for such appeal. Proceedings on appeal to the commission from the amount of a bill rendered under this subsection shall be in accordance with the provisions of KRS 341.430 and the decision of the commission shall be subject to review under the provisions of KRS 341.460(1).
  - (e) Past-due payments of amounts in lieu of contributions shall be subject to the same interest, penalties, and collection provisions that, pursuant to KRS 341.300, apply to past due contributions.
- (3) (a) The secretary may, in accordance with regulations prescribed by the commission, require any governmental entity that elects to become liable for payments in lieu of contributions to deposit with the cabinet within thirty (30) days after the effective date of its election as a condition thereof, money equal to two percent (2%) of the governmental entity's total wages paid for employment as defined in KRS 341.050(1)(d) for the four (4) calendar quarters immediately preceding the effective date of such election. If the entity did not pay wages in each of such four (4) quarters, the amount of deposit, if required, shall be determined by the secretary.
- (b) Provided, however, that the amount of money required to be deposited under this paragraph shall not exceed the amount for which any contributing employer would be liable if subject to the maximum contribution rate applicable to the annual taxable payroll.
  - (c) Money deposited in accordance with this subsection shall be retained by the cabinet in an escrow account until all possible liability to the fund under the election is terminated, at which time it shall be returned to the governmental entity, less any deductions as hereinafter provided. The cabinet may deduct from the money deposited under this subsection by a governmental entity to the extent necessary to satisfy any due and unpaid payments in lieu of contributions and any applicable interest and penalties provided for in paragraph (e) of subsection (3) of this section. The secretary shall require the governmental entity within thirty (30) days following any deduction from a money deposit under the provisions of this subsection to deposit sufficient additional money to make whole the governmental entity's deposit at the prior level. The secretary may, at any time, review the adequacy of the deposit made by any governmental entity. If, as a result of such review, he determines that an adjustment is necessary, he shall require the governmental entity to make an additional deposit within thirty (30) days of written notice of his determination or shall return to it such portion of the deposit as he no longer considers necessary, whichever action is appropriate.
  - (d) If any governmental entity fails to make a deposit, or to increase or make whole the amount of a previously made deposit, as provided under this subsection, the secretary may terminate such governmental entity's election to make payments in lieu of contributions and such termination shall continue for not less than the remainder of that calendar year and the following calendar year beginning with the quarter in which such termination becomes effective; provided, that the secretary may extend for good cause the applicable filing, deposit or adjustment period by not more than sixty (60) days.
- (4) If any governmental entity is delinquent in making payments in lieu of contributions as required under subsection (3) of this section, the secretary may terminate such governmental entity's election to make payments in lieu of contributions as of the beginning of the next calendar year, and such termination shall be effective for that and the next calendar year.
- (5) Notwithstanding any other section of this chapter, no employing unit electing to make payments in lieu of contributions under the provisions of this section shall be entitled to relief of benefit charges.

➔Section 8. KRS 341.350 is amended to read as follows:

An unemployed worker shall, except as provided in KRS 341.360 and 341.370, be eligible for benefits with respect to any week of unemployment only if:

- (1) He has made a claim for benefits;
- (2) *For an initial claim made on or after January 1, 2012, he has served a waiting period of one (1) week, during which he has not received benefits. The waiting week period shall be the first compensable week of an initial claim for benefits for which he is eligible and qualified to receive benefits under this chapter. A waiting week period shall be required for each benefit year, whether or not consecutive. No more than one (1) waiting week period shall be required in any benefit year. The waiting week shall become compensable once the remaining balance on the claim is equal to or less than the compensable amount for the waiting week;*
- (3) (a) He has registered for work with respect to such week in accordance with regulations prescribed by the secretary; and
  - (b) He participates in reemployment services, such as job search assistance services, if pursuant to a profiling system established by the secretary, he has been determined to be likely to exhaust regular benefits unless:
    1. The claimant has completed the services to which he is referred; or
    2. There is justifiable cause for the claimant's failure to participate in the services. For the purpose of this section, "justifiable cause" shall be interpreted to mean what a reasonable person would do in like circumstances;
- ~~(4)(3)~~ He is physically and mentally able to work;
- ~~(5)(4)~~ He is available for suitable work, and making such reasonable effort to obtain work as might be expected of a prudent person under like circumstances;
- ~~(6)(5)~~ His base-period wages in that calendar quarter of his base period in which such wages were highest are equal to at least seven hundred fifty dollars (\$750), and his total base-period wages are not less than one and one-half (1-1/2) times the base-period wages paid to him in such quarter and he was paid base-period wages in the last six (6) months of his base period equal to at least eight (8) times his weekly benefit rate with a minimum of seven hundred fifty dollars (\$750) earned outside the high quarter;
- ~~(7)(6)~~ An otherwise eligible worker shall not be denied benefits under subsection ~~(5)(4)~~ of this section or because of his failure to actively seek work, nor disqualified under paragraph (a) of subsection (1) of KRS 341.370 with respect to any week he is in training with the approval of the secretary.
- ~~(8)(7)~~ Notwithstanding any other provisions of this chapter, no otherwise eligible worker shall be denied benefits for any week because he is in training approved under 19 U.S.C. sec. 2296 (Section 236(a)(1) of the Trade Act of 1974), nor shall such worker be denied benefits by reason of leaving work to enter such training provided such work is not suitable employment, or because of the application to any such week in training of provisions in this law (or any applicable federal unemployment compensation law) relating to availability for work, active search for work, or refusal to accept work. For purpose of this subsection, the term "suitable employment" shall mean employment of a substantially equal or higher skill level than the worker's past adversely affected employment as defined in 19 U.S.C. sec. 2319 (Trade Act of 1974), and wages for such work are not less than eighty percent (80%) of the workers' average weekly wage as determined for purposes of the Trade Act of 1974.
- ~~(9)(8)~~ The foregoing eligibility requirements and the conditions of benefit disqualifications imposed by KRS 341.370 shall be strictly construed. Nothing in this section, excepting subsection ~~(6)(5)~~, nor in KRS 341.360 or 341.370 shall affect the establishment of a "benefit year."

➔Section 9. KRS 341.380 is amended to read as follows:

- (1) All benefits shall be paid through employment offices, or such other agencies as may be designated by regulations of the secretary. Claims for all payments of benefits shall be made in accordance with regulations of the secretary.
- (2) The weekly benefit rate payable to an eligible worker for weeks of unemployment shall, except as provided in KRS 341.390, be an amount equal to *one and three thousand seventy-eight ten-thousandths percent*

~~(1.3078%)~~~~[one and one hundred eighty five one thousandths percent (1.185%)]~~ of his total base-period wages, except that no worker's weekly benefit amount shall be less than thirty-nine dollars (\$39), nor more than the maximum rate as determined in accordance with subsection (3) of this section. For claims effective on or after January 1, ~~2012~~~~[2001]~~, the weekly benefit rate shall, except as provided in KRS 341.390, be ***one and one thousand nine hundred twenty-three ten-thousandths percent (1.1923%)***~~[one and three thousand seventy-eight ten thousandths percent (1.3078%)]~~ of his total base-period wages, except that no worker's weekly benefit amount shall be less than thirty-nine dollars (\$39) nor more than the maximum rate as determined in accordance with subsection (3) of this section.

- (3) Prior to the first day of July of each year the secretary shall determine the average weekly wage for insured employment by dividing the average monthly employment, as obtained by dividing the total monthly employment reported by subject employers for the preceding calendar year by twelve (12), into the total wages reported by such employers for such calendar year and dividing by fifty-two (52). Fifty-five percent (55%) of the amount thus obtained, adjusted to the nearest multiple of one dollar (\$1), shall constitute the maximum weekly benefit rate for those workers whose benefit year commences on or after the first day of July of such year and prior to the first day of July of the next following year; beginning in calendar year 1999, or any subsequent year in which the increase in the weekly benefit rate calculation set forth in subsection (2) of this section should take effect, sixty-two percent (62%) of the average weekly wage, adjusted to the nearest multiple of one dollar (\$1), shall constitute the maximum weekly benefit rate for those workers whose benefit year commences on or after the first day of July of that year and prior to the first day of July of the next following year; except that for the benefit years beginning on or after July 1, 1982, if the "trust fund balance" as of ***September 30***~~[December 31]~~ immediately preceding the benefit year is less than one hundred twenty million dollars (\$120,000,000), the maximum weekly benefit rate shall not exceed the prior year's maximum weekly benefit rate. If such "trust fund balance" as of ***September 30***~~[December 31]~~ immediately preceding the benefit year:
- (a) Equals or exceeds one hundred twenty million dollars (\$120,000,000), but is less than ***two hundred million dollars (\$200,000,000)***~~[one hundred fifty million dollars (\$150,000,000)]~~, the maximum weekly benefit rate shall not exceed the prior year's maximum weekly benefit rate by more than six percent (6%). The rate thus determined shall be adjusted to the nearest multiple of one dollar (\$1);
  - (b) Equals or exceeds ***two hundred million dollars (\$200,000,000)***~~[one hundred fifty million dollars (\$150,000,000)]~~, but is less than ***three hundred million dollars (\$300,000,000)***~~[two hundred fifty million dollars (\$250,000,000)]~~, the maximum weekly benefit rate shall not exceed the prior year's maximum weekly benefit rate by more than eight percent (8%). The rate thus determined shall be adjusted to the nearest multiple of one dollar (\$1);
  - (c) Equals or exceeds ***three hundred million dollars (\$300,000,000)***~~[two hundred fifty million dollars (\$250,000,000)]~~, but is less than ***four hundred million dollars (\$400,000,000)***~~[two hundred seventy-five million dollars (\$275,000,000)]~~, the maximum weekly benefit rate shall not exceed the prior year's maximum weekly benefit rate by more than ten percent (10%). The rate thus determined shall be adjusted to the nearest multiple of one dollar (\$1);
  - (d) Equals or exceeds ***four hundred million dollars (\$400,000,000)***~~[two hundred seventy-five million dollars (\$275,000,000)]~~, but is less than ***five hundred million dollars (\$500,000,000)***~~[three hundred fifty million dollars (\$350,000,000)]~~, the maximum weekly benefit rate shall not exceed the prior year's maximum weekly benefit rate by more than twelve percent (12%). The rate thus determined shall be adjusted to the nearest multiple of one dollar (\$1); and
  - (e) ***Equals or exceeds five hundred million dollars (\$500,000,000), the maximum weekly benefit rate shall not exceed the prior year's maximum weekly benefit rate by more than fifteen percent (15%). The rate thus determined shall be adjusted to the nearest multiple of one dollar (\$1); and***
  - (f) Is such that it resulted in the establishment of an employer contribution rate schedule, as provided for in KRS 341.270, for the current calendar year which has a higher minimum rate than the schedule in effect for the immediately preceding calendar year, the maximum weekly benefit rate shall not exceed the prior year's maximum weekly benefit rate.
- (4) The maximum amount of benefits payable to any worker within any benefit year shall be the amount equal to whichever is the lesser of:

- (a) Twenty-six (26) times his weekly benefit rate; or
- (b) One-third (1/3) of his base-period wages, except that no worker's maximum amount shall be less than fifteen (15) times his weekly benefit rate. Such maximum amount, if not a multiple of one dollar (\$1), shall be adjusted to the nearest multiple of one dollar (\$1).

➔Section 10. KRS 341.530 is amended to read as follows:

- (1) The Office of Employment and Training, Department of Workforce Investment, shall maintain a reserve account for each subject employer making contributions to the fund and a reimbursing employer account for each subject employer making payment in lieu of contributions, and shall, except as provided in KRS 341.590, credit to such account the total amount of all contributions or benefit reimbursement paid by the employer on his own behalf. Nothing in this section or elsewhere in this chapter shall be construed to grant any employer or individual who is or was in his employ prior claims or rights to the amounts paid by him into the fund.
- (2) Except as provided in subsection (3) of this section, all regular benefits paid to an eligible worker in accordance with KRS 341.380 plus the extended benefits paid in accordance with KRS 341.700 to 341.740, subject to the provisions of paragraphs (a) and (b) below, shall be charged against the reserve account or reimbursing employer account of his most recent employer. No employer shall be deemed to be the most recent employer unless the eligible worker to whom benefits are payable shall have worked for such employer in each of ten (10) weeks whether or not consecutive back to the beginning of the worker's base period.
  - (a) Subject employers, which are not governmental entities as defined in KRS 341.069, shall be charged one-half (1/2) of the extended benefits paid in accordance with KRS 341.700 to 341.740; and
  - (b) Subject employers which are governmental entities, as defined in KRS 341.069, shall be charged for all extended benefits paid in accordance with KRS 341.700 to 341.740 for compensable weeks occurring on or after January 1, 1979, and for one-half (1/2) of the extended benefits paid for compensable weeks occurring prior to such date.
- (3) Notwithstanding the provisions of subsection (2) of this section, benefits paid to an eligible worker and chargeable to a contributing employer's reserve account under such subsection shall be charged against the pooled account if such worker was discharged by such employer for misconduct connected with his most recent work for such employer, voluntarily left his most recent work with such employer without good cause attributable to the employment, or the employer has continued to provide part-time employment and wages, without interruption, to the same extent that was provided from the date of hire, and the employer within a reasonable time, as prescribed by regulation of the secretary, notifies the office, in writing, of the alleged voluntary quitting, discharge for misconduct or continuing part-time employment; provided, however, that no employer making payments to the fund in lieu of contributions shall be relieved of charges by reason of this subsection.
- (4) Each subject employer's reserve account or reimbursing account shall, unless terminated as of the computation date (as defined in subsection (5) of KRS 341.270), be charged with all benefits paid to eligible workers which are chargeable to such reserve account or reimbursing account under subsection (2) of this section. A subject employer's reserve account or reimbursing account shall be deemed to be terminated if he has ceased to be subject to this chapter, and his account has been closed and any balance remaining therein has been transferred to the fund's pooled account or to a successor's account as provided in KRS 341.540 or has been refunded if the employer is a reimbursing employer.
- (5) Notwithstanding subsection (1) of this section, two (2) or more nonprofit (Internal Revenue Code sec. 501(c)(3)) organizations may jointly request the secretary to establish a group reserve account or reimbursing account for such nonprofit organizations. Two (2) or more governmental entities may jointly request the secretary to establish a group reserve account or reimbursing account, and once established, such account shall remain in effect at least two (2) calendar years and thereafter until either dissolved at the discretion of the secretary or upon filing application for dissolution by the group members. Each member of a group shall be jointly and severally liable for all payments due under this chapter from each or all of such group members. The secretary shall prescribe such procedures as he deems necessary for the establishment, maintenance, and dissolution of a group reserve account or reimbursing account.
- (6) Any subject contributing employer may at any time *on or before December 31, 2011*, make voluntary payments to the fund, additional to the contributions required under KRS 341.260 and 341.270. *Effective January 1, 2012, any subject contributing employer with a negative reserve account balance may make voluntary payments to the fund every other calendar year, in addition to the contributions required under*

**KRS 341.260 and 341.270.** Notwithstanding any other provision of this chapter, contributions paid on or before the computation date and voluntary payments made within twenty (20) days following the mailing of notices of new rates shall be credited to an employer's reserve account as of the computation date, provided no voluntary payments shall be used in computing an employer's rate unless the payment is made prior to the expiration of one hundred and twenty (120) days after the beginning of the year for which the rate is effective. Voluntary ~~payments~~~~[contributions]~~ by any employer~~[ subject to a minimum rate as provided in KRS 341.270(2) or KRS 341.272(1)]~~ shall not exceed any negative balance they may have in their reserve account as of the computation date. Any employer who is delinquent in the payment of contributions, penalties, or interest as of the computation date shall be entitled to make voluntary payments only after the amount of the delinquency is paid in full.

➔Section 11. The Education and Workforce Development Cabinet, in administering KRS Chapter 341, is encouraged to promulgate or amend administrative regulations to implement the following on or before January 1, 2012:

- (1) Allow for the electronic notification of an employer regarding an unemployment insurance claim;
- (2) Increase the employer protest period from ten to fifteen days after an unemployment insurance claim is filed;
- (3) Institute random audits of job search efforts provided by claimants; and
- (4) Revise the unemployment insurance appeal process regarding the conduct of hearings.

**Signed by Governor June 4, 2010.**