

## HOUSE BILL No. 2702

By Committee on Commerce, Labor and Economic Development

2-11

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1 AN ACT concerning the employment security law; making privately  
2 contracted school bus drivers eligible for unemployment benefits;  
3 amending K.S.A. 44-706 and repealing the existing section.  
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5 *Be it enacted by the Legislature of the State of Kansas:*

6 Section 1. K.S.A. 44-706 is hereby amended to read as follows: 44-  
7 706. The secretary shall examine whether an individual has separated from  
8 employment for each week claimed. The secretary shall apply the  
9 provisions of this section to the individual's most recent employment prior  
10 to the week claimed. An individual shall be disqualified for benefits:

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

28 (1) The individual was forced to leave work because of illness or  
29 injury upon the advice of a licensed and practicing health care provider  
30 and, upon learning of the necessity for absence, immediately notified the  
31 employer thereof, or the employer consented to the absence, and after  
32 recovery from the illness or injury, when recovery was certified by a  
33 practicing health care provider, the individual returned to the employer and  
34 offered to perform services and the individual's regular work or  
35 comparable and suitable work was not available. As used in this paragraph  
36 "health care provider" means any person licensed by the proper licensing

1 authority of any state to engage in the practice of medicine and surgery,  
2 osteopathy, chiropractic, dentistry, optometry, podiatry or psychology;

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

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

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

16 (5) the individual left work because of hazardous working conditions;  
17 in determining whether or not working conditions are hazardous for an  
18 individual, the degree of risk involved to the individual's health, safety and  
19 morals, the individual's physical fitness and prior training and the working  
20 conditions of workers engaged in the same or similar work for the same  
21 and other employers in the locality shall be considered. As used in this  
22 paragraph, "hazardous working conditions" means working conditions that  
23 could result in a danger to the physical or mental well-being of the  
24 individual. Each determination as to whether hazardous working  
25 conditions exist shall include, but shall not be limited to, a consideration  
26 of:

27 (A) The safety measures used or the lack thereof; and

28 (B) the condition of equipment or lack of proper equipment; no work  
29 shall be considered hazardous if the working conditions surrounding the  
30 individual's work are the same or substantially the same as the working  
31 conditions generally prevailing among individuals performing the same or  
32 similar work for other employers engaged in the same or similar type of  
33 activity;

34 (6) the individual left work to enter training approved under section  
35 236(a)(1) of the federal trade act of 1974, provided the work left is not of a  
36 substantially equal or higher skill level than the individual's past adversely  
37 affected employment, as defined for purposes of the federal trade act of  
38 1974, and wages for such work are not less than 80% of the individual's  
39 average weekly wage as determined for the purposes of the federal trade  
40 act of 1974;

41 (7) the individual left work because of unwelcome harassment of the  
42 individual by the employer or another employee of which the employing  
43 unit had knowledge and that would impel the average worker to give up

1 such worker's employment;

2 (8) the individual left work to accept better work; each determination  
3 as to whether or not the work accepted is better work shall include, but  
4 shall not be limited to, consideration of:

5 (A) The rate of pay, the hours of work and the probable permanency  
6 of the work left as compared to the work accepted;

7 (B) the cost to the individual of getting to the work left in comparison  
8 to the cost of getting to the work accepted; and

9 (C) the distance from the individual's place of residence to the work  
10 accepted in comparison to the distance from the individual's residence to  
11 the work left;

12 (9) the individual left work as a result of being instructed or requested  
13 by the employer, a supervisor or a fellow employee to perform a service or  
14 commit an act in the scope of official job duties—~~which~~ *that* is in violation  
15 of an ordinance or statute;

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

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

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

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

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

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

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

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

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

43 (i) A restraining order or other documentation of equitable relief by a

1 court of competent jurisdiction;

2 (ii) a police record documenting the abuse;

3 (iii) documentation that the abuser has been convicted of one or more  
4 of the offenses enumerated in articles 34 and 35 of chapter 21 of the  
5 Kansas Statutes Annotated, prior to their repeal, or articles 54 or 55 of  
6 chapter 21 of the Kansas Statutes Annotated, *and amendments thereto*, or  
7 K.S.A. 2021 Supp. 21-6104, 21-6325, 21-6326 or 21-6418 through 21-  
8 6422, and amendments thereto, where the victim was a family or  
9 household member;

10 (iv) medical documentation of the abuse;

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

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

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

21 (b) If the individual has been discharged or suspended for misconduct  
22 connected with the individual's work. The disqualification shall begin the  
23 day following the separation and shall continue until after the individual  
24 becomes reemployed and in cases where the disqualification is due to  
25 discharge for misconduct has had earnings from insured work of at least  
26 three times the individual's determined weekly benefit amount, except that  
27 if an individual is discharged for gross misconduct connected with the  
28 individual's work, such individual shall be disqualified for benefits until  
29 such individual again becomes employed and has had earnings from  
30 insured work of at least eight times such individual's determined weekly  
31 benefit amount. In addition, all wage credits attributable to the  
32 employment from which the individual was discharged for gross  
33 misconduct connected with the individual's work shall be canceled. No  
34 such cancellation of wage credits shall affect prior payments made as a  
35 result of a prior separation.

36 (1) ~~For the purposes of this subsection~~ *As used in this section,*  
37 ~~"misconduct" is defined as~~ *means* a violation of a duty or obligation  
38 reasonably owed the employer as a condition of employment including,  
39 but not limited to, a violation of a company rule, including a safety rule, if:

40 (A) The individual knew or should have known about the rule;

41 (B) the rule was lawful and reasonably related to the job; and

42 (C) the rule was fairly and consistently enforced.

43 (2) (A) Failure of the employee to notify the employer of an absence

1 and an individual's leaving work prior to the end of such individual's  
2 assigned work period without permission shall be considered prima facie  
3 evidence of a violation of a duty or obligation reasonably owed the  
4 employer as a condition of employment.

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

8 (i) The individual was absent or tardy without good cause;

9 (ii) the individual had knowledge of the employer's attendance  
10 expectation; and

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

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

20 (3) (A) The term "gross misconduct" as used in this subsection shall  
21 be construed to mean conduct evincing extreme, willful or wanton  
22 misconduct as defined by this subsection. Gross misconduct shall include,  
23 but not be limited to:

24 (i) Theft;

25 (ii) fraud;

26 (iii) intentional damage to property;

27 (iv) intentional infliction of personal injury; or

28 (v) any conduct that constitutes a felony.

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

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

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

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

37 (a) The test was ~~either~~:

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

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

43 (3) requested pursuant to a written policy of the employer of which

1 the employee had knowledge and was a required condition of  
2 employment;

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

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

8 (b) the test sample was collected ~~either~~:

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

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

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

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

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

22 (c) the collecting and labeling of a chemical test sample was  
23 performed by a licensed health care professional or any other individual  
24 certified pursuant to paragraph (b)(3)(A)(iii)(f) or authorized to collect or  
25 label test samples by federal or state law, or a federal or state rule or  
26 regulation having the force or effect of law, including law enforcement  
27 personnel;

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

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

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

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

- 1 (iv) an individual's refusal to submit to a chemical test or breath  
2 alcohol test, ~~provided if:~~
- 3 (a) The test meets the standards of the drug free workplace act, 41  
4 U.S.C. § 701 et seq.;
- 5 (b) the test was administered as part of an employee assistance  
6 program or other drug or alcohol treatment program in which the  
7 employee was participating voluntarily or as a condition of further  
8 employment;
- 9 (c) the test was otherwise required by law and the test constituted a  
10 required condition of employment for the individual's job;
- 11 (d) the test was requested pursuant to a written policy of the employer  
12 of which the employee had knowledge and was a required condition of  
13 employment; or
- 14 (e) there was reasonable suspicion to believe that the individual used,  
15 possessed or was impaired by alcoholic liquor, cereal malt beverage or a  
16 nonprescribed controlled substance while working; *or*
- 17 (v) an individual's dilution or other tampering of a chemical test.
- 18 (C) ~~For purposes of~~ *As used in* this subsection:
- 19 (i) "Alcohol concentration" means the number of grams of alcohol  
20 per 210 liters of breath;
- 21 (ii) "alcoholic liquor" means the same as provided in K.S.A. 41-102,  
22 and amendments thereto;
- 23 (iii) "cereal malt beverage" means the same as provided in K.S.A. 41-  
24 2701, and amendments thereto;
- 25 (iv) "chemical test" includes, but is not limited to, tests of urine,  
26 blood or saliva;
- 27 (v) "controlled substance" means the same as provided in K.S.A.  
28 2021 Supp. 21-5701, and amendments thereto;
- 29 (vi) "required by law" means required by a federal or state law, a  
30 federal or state rule or regulation having the force and effect of law, a  
31 county resolution or municipal ordinance, or a policy relating to public  
32 safety adopted in an open meeting by the governing body of any special  
33 district or other local governmental entity;
- 34 (vii) "positive breath test" means a test result showing an alcohol  
35 concentration of 0.04 or greater, or the levels listed in 49 C.F.R. part 40, if  
36 applicable, unless the test was administered as part of an employee  
37 assistance program or other drug or alcohol treatment program in which  
38 the employee was participating voluntarily or as a condition of further  
39 employment, in which case "positive chemical test" shall mean a test result  
40 showing an alcohol concentration at or above the levels provided for in the  
41 assistance or treatment program;
- 42 (viii) "positive chemical test" means a chemical result showing a  
43 concentration at or above the levels listed in K.S.A. 44-501, and

1 amendments thereto, or 49 C.F.R. part 40, as applicable, for the drugs or  
2 abuse listed therein, unless the test was administered as part of an  
3 employee assistance program or other drug or alcohol treatment program  
4 in which the employee was participating voluntarily or as a condition of  
5 further employment, in which case "positive chemical test" means a  
6 chemical result showing a concentration at or above the levels provided for  
7 in the assistance or treatment program.

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

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

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

18 (i) Inefficiency;

19 (ii) unsatisfactory performance due to inability, incapacity or lack of  
20 training or experience;

21 (iii) isolated instances of ordinary negligence or inadvertence;

22 (iv) ~~good-faith~~*good faith* errors in judgment or discretion; or

23 (v) unsatisfactory work or conduct due to circumstances beyond the  
24 individual's control; or

25 (C) the individual's refusal to perform work in excess of the contract  
26 of hire.

27 (e) If the individual has failed, without good cause, to either apply for  
28 suitable work when so directed by the employment office of the secretary  
29 of labor, or to accept suitable work when offered to the individual by the  
30 employment office, the secretary of labor, or an employer, such  
31 disqualification shall begin with the week in which such failure occurred  
32 and shall continue until the individual becomes reemployed and has had  
33 earnings from insured work of at least three times such individual's  
34 determined weekly benefit amount. In determining whether or not any  
35 work is suitable for an individual, the secretary of labor, or a person or  
36 persons designated by the secretary, shall consider the degree of risk  
37 involved to health, safety and morals, physical fitness and prior training,  
38 experience and prior earnings, length of unemployment and prospects for  
39 securing local work in the individual's customary occupation or work for  
40 which the individual is reasonably fitted by training or experience, and the  
41 distance of the available work from the individual's residence.  
42 Notwithstanding any other provisions of this act, an otherwise eligible  
43 individual shall not be disqualified for refusing an offer of suitable



1 employment, or failing to apply for suitable employment when notified by  
2 an employment office, or for leaving the individual's most recent work  
3 accepted during approved training, including training approved under  
4 section 236(a)(1) of the trade act of 1974, if the acceptance of or applying  
5 for suitable employment or continuing such work would require the  
6 individual to terminate approved training and no work shall be deemed  
7 suitable and benefits shall not be denied under this act to any otherwise  
8 eligible individual for refusing to accept new work under any of the  
9 following conditions:

10 (1) If the position offered is vacant due directly to a strike, lockout or  
11 other labor dispute;

12 (2) if the remuneration, hours or other conditions of the work offered  
13 are substantially less favorable to the individual than those prevailing for  
14 similar work in the locality;

15 (3) if as a condition of being employed, the individual would be  
16 required to join or to resign from or refrain from joining any labor  
17 organization; and

18 (4) if the individual left employment as a result of domestic violence,  
19 and the position offered does not reasonably accommodate the individual's  
20 physical, psychological, safety, or legal needs relating to such domestic  
21 violence.

22 (d) For any week with respect to which the secretary of labor, or a  
23 person or persons designated by the secretary, finds that the individual's  
24 unemployment is due to a stoppage of work ~~which~~ *that* exists because of a  
25 labor dispute or there would have been a work stoppage had normal  
26 operations not been maintained with other personnel previously and  
27 currently employed by the same employer at the factory, establishment or  
28 other premises at which the individual is or was last employed, except that  
29 this subsection (d) shall not apply if it is shown to the satisfaction of the  
30 secretary of labor, or a person or persons designated by the secretary, that:

31 (1) The individual is not participating in or financing or directly interested  
32 in the labor dispute ~~which~~ *that* caused the stoppage of work; and (2) the  
33 individual does not belong to a grade or class of workers of which,  
34 immediately before the commencement of the stoppage, there were  
35 members employed at the premises at which the stoppage occurs any of  
36 whom are participating in or financing or directly interested in the dispute.

37 If in any case separate branches of work ~~which~~ *that* are commonly  
38 conducted as separate businesses in separate premises are conducted in  
39 separate departments of the same premises, each such department shall, for  
40 the purpose of this subsection be deemed to be a separate factory,  
41 establishment or other premises. For the purposes of this subsection,  
42 failure or refusal to cross a picket line or refusal for any reason during the  
43 continuance of such labor dispute to accept the individual's available and

1 customary work at the factory, establishment or other premises where the  
2 individual is or was last employed shall be considered as participation and  
3 interest in the labor dispute.

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

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

15 (g) If the individual, or another in such individual's behalf with the  
16 knowledge of the individual, has knowingly made a false statement or  
17 representation, or has knowingly failed to disclose a material fact to obtain  
18 or increase benefits under this act or any other unemployment  
19 compensation law administered by the secretary of labor, unless the  
20 individual has repaid the full amount of the overpayment as determined by  
21 the secretary or the secretary's designee, including, but not limited to, the  
22 total amount of money erroneously paid as benefits or unlawfully  
23 obtained, interest, penalties and any other costs or fees provided by law. If  
24 the individual has made such repayment, the individual shall be  
25 disqualified for a period of one year for the first occurrence or five years  
26 for any subsequent occurrence, beginning with the first day following the  
27 date the department of labor confirmed the individual has successfully  
28 repaid the full amount of the overpayment. In addition to the penalties set  
29 forth in K.S.A. 44-719, and amendments thereto, an individual who has  
30 knowingly made a false statement or representation or who has knowingly  
31 failed to disclose a material fact to obtain or increase benefits under this  
32 act or any other unemployment compensation law administered by the  
33 secretary of labor shall be liable for a penalty in the amount equal to 25%  
34 of the amount of benefits unlawfully received. Notwithstanding any other  
35 provision of law, such penalty shall be deposited into the employment  
36 security trust fund. No person who is a victim of identify theft shall be  
37 subject to the provisions of this subsection. The secretary shall investigate  
38 all cases of an alleged false statement or representation or failure to  
39 disclose a material fact to ensure no victim of identity theft is disqualified,  
40 required to repay or subject to any penalty as provided by this subsection  
41 as a result of identity theft.

42 (h) For any week with respect to which the individual is receiving  
43 compensation for temporary total disability or permanent total disability

1 under the workmen's compensation law of any state or under a similar law  
2 of the United States.

3 (i) For any week of unemployment on the basis of service in an  
4 instructional, research or principal administrative capacity for an  
5 educational institution as defined in K.S.A. 44-703(v), and amendments  
6 thereto, if such week begins during the period between two successive  
7 academic years or terms or, when an agreement provides instead for a  
8 similar period between two regular but not successive terms during such  
9 period or during a period of paid sabbatical leave provided for in the  
10 individual's contract, if the individual performs such services in the first of  
11 such academic years or terms and there is a contract or a reasonable  
12 assurance that such individual will perform services in any such capacity  
13 for any educational institution in the second of such academic years or  
14 terms.

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

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

37 (l) For any week of unemployment on the basis of any services,  
38 substantially all of which consist of participating in sports or athletic  
39 events or training or preparing to so participate, if such week begins during  
40 the period between two successive sport seasons or similar period if such  
41 individual performed services in the first of such seasons or similar periods  
42 and there is a reasonable assurance that such individual will perform such  
43 services in the later of such seasons or similar periods.

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

16 (n) For any week in which an individual is receiving a governmental  
17 or other pension, retirement or retired pay, annuity or other similar  
18 periodic payment under a plan maintained by a base period employer and  
19 to which the entire contributions were provided by such employer, except  
20 that:

21 (1) If the entire contributions to such plan were provided by the base  
22 period employer but such individual's weekly benefit amount exceeds such  
23 governmental or other pension, retirement or retired pay, annuity or other  
24 similar periodic payment attributable to such week, the weekly benefit  
25 amount payable to the individual shall be reduced, but not below zero, by  
26 an amount equal to the amount of such pension, retirement or retired pay,  
27 annuity or other similar periodic payment ~~which~~ that is attributable to such  
28 week; ~~or~~

29 (2) if only a portion of contributions to such plan were provided by  
30 the base period employer, the weekly benefit amount payable to such  
31 individual for such week shall be reduced, but not below zero, by the  
32 prorated weekly amount of the pension, retirement or retired pay, annuity  
33 or other similar periodic payment after deduction of that portion of the  
34 pension, retirement or retired pay, annuity or other similar periodic  
35 payment that is directly attributable to the percentage of the contributions  
36 made to the plan by such individual; ~~or~~

37 (3) if the entire contributions to the plan were provided by such  
38 individual, or by the individual and an employer, or any person or  
39 organization, who is not a base period employer, no reduction in the  
40 weekly benefit amount payable to the individual for such week shall be  
41 made under this subsection; or

42 (4) whatever portion of contributions to such plan were provided by  
43 the base period employer, if the services performed for the employer by

1 such individual during the base period, or remuneration received for the  
2 services, did not affect the individual's eligibility for, or increased the  
3 amount of, such pension, retirement or retired pay, annuity or other similar  
4 periodic payment, no reduction in the weekly benefit amount payable to  
5 the individual for such week shall be made under this subsection. No  
6 reduction shall be made for payments made under the social security act or  
7 railroad retirement act of 1974.

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

16 ~~(p) For any week of unemployment on the basis of service as a school  
17 bus or other motor vehicle driver employed by a private contractor to  
18 transport pupils, students and school personnel to or from school-related  
19 functions or activities for an educational institution, as defined in K.S.A.  
20 44-703(v), and amendments thereto, if such week begins during the period  
21 between two successive academic years or during a similar period between  
22 two regular terms, whether or not successive, if the individual has a  
23 contract or contracts, or a reasonable assurance thereof, to perform  
24 services in any such capacity with a private contractor for any educational  
25 institution for both such academic years or both such terms. An individual  
26 shall not be disqualified for benefits as provided in this subsection for any  
27 week of unemployment on the basis of service as a bus or other motor  
28 vehicle driver employed by a private contractor to transport persons to or  
29 from nonschool-related functions or activities.~~

30 (q) For any week of unemployment on the basis of services  
31 performed by the individual in any capacity and under any of the  
32 circumstances described in subsection (i), (j), (k) or (o) which are provided  
33 to or on behalf of an educational institution, as defined in K.S.A. 44-  
34 703(v), and amendments thereto, while the individual is in the employ of  
35 an employer which is a governmental entity, Indian tribe or any employer  
36 described in section 501(c)(3) of the federal internal revenue code of 1986  
37 which is exempt from income under section 501(a) of the code.

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

43 (1) The individual was engaged in full-time employment concurrent

1 with the individual's school attendance;

2 (2) the individual is attending approved training as defined in K.S.A.  
3 44-703(s), and amendments thereto; or

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

7 ~~(s)~~(r) (1) For any week with respect to which an individual is  
8 receiving or has received remuneration in the form of a back pay award or  
9 settlement. The remuneration shall be allocated to the week or weeks in  
10 the manner as specified in the award or agreement, or in the absence of  
11 such specificity in the award or agreement, such remuneration shall be  
12 allocated to the week or weeks in which such remuneration, in the  
13 judgment of the secretary, would have been paid.

14 ~~(1)~~(2) For any such weeks that an individual receives remuneration in  
15 the form of a back pay award or settlement, an overpayment will be  
16 established in the amount of unemployment benefits paid and shall be  
17 collected from the claimant.

18 ~~(2)~~(3) If an employer chooses to withhold from a back pay award or  
19 settlement, amounts paid to a claimant while they claimed unemployment  
20 benefits, such employer shall pay the department the amount withheld.  
21 With respect to such amount, the secretary shall have available all of the  
22 collection remedies authorized or provided in K.S.A. 44-717, and  
23 amendments thereto.

24 ~~(1)~~(s) (1) Any applicant for or recipient of unemployment benefits  
25 who tests positive for unlawful use of a controlled substance or controlled  
26 substance analog shall be required to complete a substance abuse treatment  
27 program approved by the secretary of labor, secretary of commerce or  
28 secretary for children and families, and a job skills program approved by  
29 the secretary of labor, secretary of commerce or the secretary for children  
30 and families. Subject to applicable federal laws, any applicant for or  
31 recipient of unemployment benefits who fails to complete or refuses to  
32 participate in the substance abuse treatment program or job skills program  
33 as required under this subsection shall be ineligible to receive  
34 unemployment benefits until completion of such substance abuse  
35 treatment and job skills programs. Upon completion of both substance  
36 abuse treatment and job skills programs, such applicant for or recipient of  
37 unemployment benefits may be subject to periodic drug screening, as  
38 determined by the secretary of labor. Upon a second positive test for  
39 unlawful use of a controlled substance or controlled substance analog, an  
40 applicant for or recipient of unemployment benefits shall be ordered to  
41 complete again a substance abuse treatment program and job skills  
42 program, and shall be terminated from unemployment benefits for a period  
43 of 12 months, or until such applicant for or recipient of unemployment

1 benefits completes both substance abuse treatment and job skills programs,  
2 whichever is later. Upon a third positive test for unlawful use of a  
3 controlled substance or controlled substance analog, an applicant for or a  
4 recipient of unemployment benefits shall be terminated from receiving  
5 unemployment benefits, subject to applicable federal law.

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

12 ~~(t)~~(t) If the individual was found not to have a disqualifying  
13 adjudication or conviction under K.S.A. 39-970 or 65-5117, and  
14 amendments thereto, was hired and then was subsequently convicted of a  
15 disqualifying felony under K.S.A. 39-970 or 65-5117, and amendments  
16 thereto, and discharged pursuant to K.S.A. 39-970 or 65-5117, and  
17 amendments thereto. The disqualification shall begin the day following the  
18 separation and shall continue until after the individual becomes  
19 reemployed and has had earnings from insured work of at least three times  
20 the individual's determined weekly benefit amount.

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

28 Sec. 2. K.S.A. 44-706 is hereby repealed.

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