

SENATE BILL No. 163

By Committee on Commerce

2-8

1 AN ACT concerning employment security law; relating to disqualification
2 for benefits; disqualification begin dates; recovery from illness or
3 injury; part-time employment for an educational institution; amending
4 K.S.A. 2020 Supp. 44-706 and repealing the existing section.

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

7 Section 1. K.S.A. 2020 Supp. 44-706 is hereby amended to read as
8 follows: 44-706. The secretary shall examine whether an individual has
9 separated from employment for each week claimed. The secretary shall
10 apply the provisions of this section to the individual's most recent
11 employment prior to the week claimed. An individual shall be disqualified
12 for benefits:

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

31 (1) The individual was forced to leave work because of illness or
32 injury upon the advice of a licensed and practicing health care provider
33 and, upon learning of the necessity for absence, immediately notified the
34 employer thereof, or the employer consented to the absence, ~~and after~~
35 ~~recovery from the illness or injury, when recovery was certified by a~~
36 ~~practicing health care provider, the individual returned to the employer and~~

1 offered to perform services and the individual's regular work or
2 comparable and suitable work was not available. As used in this paragraph
3 "health care provider" means any person licensed by the proper licensing
4 authority of any state to engage in the practice of medicine and surgery,
5 osteopathy, chiropractic, dentistry, optometry, podiatry or psychology;

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

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

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

19 (5) the individual left work because of hazardous working conditions;
20 in determining whether or not working conditions are hazardous for an
21 individual, the degree of risk involved to the individual's health, safety and
22 morals, the individual's physical fitness and prior training and the working
23 conditions of workers engaged in the same or similar work for the same
24 and other employers in the locality shall be considered; as used in this
25 paragraph, "hazardous working conditions" means working conditions that
26 could result in a danger to the physical or mental well-being of the
27 individual; each determination as to whether hazardous working
28 conditions exist shall include, but shall not be limited to, a consideration
29 of: (A) The safety measures used or the lack thereof; and (B) the condition
30 of equipment or lack of proper equipment; no work shall be considered
31 hazardous if the working conditions surrounding the individual's work are
32 the same or substantially the same as the working conditions generally
33 prevailing among individuals performing the same or similar work for
34 other employers engaged in the same or similar type of activity;

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

42 (7) the individual left work because of unwelcome harassment of the
43 individual by the employer or another employee ~~of which that~~ the

1 employing unit had knowledge *of* and that would impel the average worker
2 to give up such worker's employment;

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

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

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

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

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

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

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

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

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

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

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

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

- 1 (ii) a police record documenting the abuse;
- 2 (iii) documentation that the abuser has been convicted of one or more
3 of the offenses enumerated in articles 34 and 35 of chapter 21 of the
4 Kansas Statutes Annotated, prior to their repeal, or articles 54 or 55 of
5 chapter 21 of the Kansas Statutes Annotated, or K.S.A. 2020 Supp. 21-
6 6104, 21-6325, 21-6326 or 21-6418 through 21-6422, and amendments
7 thereto, where the victim was a family or household member;
- 8 (iv) medical documentation of the abuse;
- 9 (v) a statement provided by a counselor, social worker, health care
10 provider, clergy, shelter worker, legal advocate, domestic violence or
11 sexual assault advocate or other professional who has assisted the
12 individual in dealing with the effects of abuse on the individual or the
13 individual's family; or
- 14 (vi) a sworn statement from the individual attesting to the abuse.

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

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

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

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

1 employer as a condition of employment.

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

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

6 (ii) the individual had knowledge of the employer's attendance
7 expectation; and

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

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

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

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

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

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

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

31 (a) The test was either:

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

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

37 (3) requested pursuant to a written policy of the employer ~~of which~~
38 *that* the employee had knowledge *of* and was a required condition of
39 employment;

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

42 (5) there was reasonable suspicion to believe that the individual used,
43 had possession of, or was impaired by alcoholic liquor, cereal malt

- 1 beverage or a nonprescribed controlled substance while working;
- 2 (b) the test sample was collected either:
- 3 (1) As prescribed by the drug free workplace act, 41 U.S.C. § 701 et
- 4 seq.;
- 5 (2) as prescribed by an employee assistance program or other drug or
- 6 alcohol treatment program ~~in which~~ *that* the employee was participating *in*
- 7 voluntarily or as a condition of further employment;
- 8 (3) as prescribed by the written policy of the employer ~~of which~~ *that*
- 9 the employee had knowledge *of* and ~~which~~ *that* constituted a required
- 10 condition of employment;
- 11 (4) as prescribed by a test ~~which~~ *that* was required by law and ~~which~~
- 12 *that* constituted a required condition of employment for the individual's
- 13 job; or
- 14 (5) at a time contemporaneous with the events establishing probable
- 15 cause;
- 16 (c) the collecting and labeling of a chemical test sample was
- 17 performed by a licensed health care professional or any other individual
- 18 certified pursuant to paragraph (b)(3)(A)(iii)(f) or authorized to collect or
- 19 label test samples by federal or state law, or a federal or state rule or
- 20 regulation having the force or effect of law, including law enforcement
- 21 personnel;
- 22 (d) the chemical test was performed by a laboratory approved by the
- 23 United States department of health and human services or licensed by the
- 24 department of health and environment, except that a blood sample may be
- 25 tested for alcohol content by a laboratory commonly used for that purpose
- 26 by state law enforcement agencies;
- 27 (e) the chemical test was confirmed by gas chromatography, gas
- 28 chromatography-mass spectroscopy or other comparably reliable
- 29 analytical method, except that no such confirmation is required for a blood
- 30 alcohol sample or a breath alcohol test;
- 31 (f) the breath alcohol test was administered by an individual trained
- 32 to perform breath tests, the breath testing instrument used was certified
- 33 and operated strictly according to a description provided by the
- 34 manufacturers and the reliability of the instrument performance was
- 35 assured by testing with alcohol standards; and
- 36 (g) the foundation evidence establishes, beyond a reasonable doubt,
- 37 that the test results were from the sample taken from the individual;
- 38 (iv) an individual's refusal to submit to a chemical test or breath
- 39 alcohol test, provided:
- 40 (a) The test meets the standards of the drug free workplace act, 41
- 41 U.S.C. § 701 et seq.;
- 42 (b) the test was administered as part of an employee assistance
- 43 program or other drug or alcohol treatment program ~~in which~~ *that* the

1 employee was participating *in* voluntarily or as a condition of further
2 employment;

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

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

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

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

12 (C) For purposes of this subsection:

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

15 (ii) "alcoholic liquor" ~~shall be defined~~ *means the same* as provided in
16 K.S.A. 41-102, and amendments thereto;

17 (iii) "cereal malt beverage" ~~shall be defined~~ *means the same* as
18 provided in K.S.A. 41-2701, and amendments thereto;

19 (iv) "chemical test" ~~shall include~~ *includes*, but is not limited to, tests
20 of urine, blood or saliva;

21 (v) "controlled substance" ~~shall be defined~~ *means the same* as
22 provided in K.S.A. 2019 Supp. 21-5701, and amendments thereto;

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

28 (vii) "positive breath test" ~~shall mean~~ *means* a test result showing an
29 alcohol concentration of 0.04 or greater, or the levels listed in 49 C.F.R.
30 part 40, if applicable, unless the test was administered as part of an
31 employee assistance program or other drug or alcohol treatment program
32 ~~in which~~ *that* the employee was participating *in* voluntarily or as a
33 condition of further employment, ~~in which~~ *that* case "positive chemical
34 test" ~~shall mean~~ *means* a test result showing an alcohol concentration at or
35 above the levels provided for in the assistance or treatment program;

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

1 above the levels provided for in the assistance or treatment program.

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

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

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

12 (i) Inefficiency;

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

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

16 (iv) good-faith errors in judgment or discretion; or

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

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

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

1 suitable and benefits shall not be denied under this act to any otherwise
2 eligible individual for refusing to accept new work under any of the
3 following conditions: (1) If the position offered is vacant due directly to a
4 strike, lockout or other labor dispute; (2) if the remuneration, hours or
5 other conditions of the work offered are substantially less favorable to the
6 individual than those prevailing for similar work in the locality; (3) if as a
7 condition of being employed, the individual would be required to join or to
8 resign from or refrain from joining any labor organization; and (4) if the
9 individual left employment as a result of domestic violence, and the
10 position offered does not reasonably accommodate the individual's
11 physical, psychological, safety, or legal needs relating to such domestic
12 violence.

13 (d) For any week with respect to which the secretary of labor, or a
14 person or persons designated by the secretary, finds that the individual's
15 unemployment is due to a stoppage of work ~~which~~ *that* exists because of a
16 labor dispute or there would have been a work stoppage had normal
17 operations not been maintained with other personnel previously and
18 currently employed by the same employer at the factory, establishment or
19 other premises ~~at which~~ *where* the individual is or was last employed,
20 except that this subsection (d) shall not apply if it is shown to the
21 satisfaction of the secretary of labor, or a person or persons designated by
22 the secretary, that: (1) The individual is not participating in or financing or
23 directly interested in the labor dispute ~~which~~ *that* caused the stoppage of
24 work; and (2) the individual does not belong to a grade or class of workers
25 of which, immediately before the commencement of the stoppage, there
26 were members employed at the premises ~~at which~~ *where* the stoppage
27 occurs any of whom are participating in or financing or directly interested
28 in the dispute. If in any case separate branches of work ~~which~~ *that* are
29 commonly conducted as separate businesses in separate premises are
30 conducted in separate departments of the same premises, each such
31 department shall, for the purpose of this subsection be deemed to be a
32 separate factory, establishment or other premises. For the purposes of this
33 subsection, failure or refusal to cross a picket line or refusal for any reason
34 during the continuance of such labor dispute to accept the individual's
35 available and customary work at the factory, establishment or other
36 premises where the individual is or was last employed shall be considered
37 as participation and interest in the labor dispute.

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

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

6 ~~(g) For the period of five years beginning with the first day following~~
7 ~~the last week of unemployment for which the individual received benefits,~~
8 ~~or for five years from the date the act was committed, whichever is the~~
9 ~~later.~~ If the individual, or another ~~in~~ *on* such individual's behalf with the
10 knowledge of the individual, has knowingly made a false statement or
11 representation, or has knowingly failed to disclose a material fact to obtain
12 or increase benefits under this act or any other unemployment
13 compensation law administered by the secretary of labor. *The*
14 *disqualification shall begin on the first day following the last week of*
15 *unemployment that the individual received benefits for, or on the date the*
16 *act was committed, whichever is later, and continue for five years, or until*
17 *the claimant repays any resulting overpayment, penalty and interest,*
18 *whichever is earlier.* In addition to the penalties set forth in K.S.A. 44-719,
19 and amendments thereto, an individual who has knowingly made a false
20 statement or representation or who has knowingly failed to disclose a
21 material fact to obtain or increase benefits under this act or any other
22 unemployment compensation law administered by the secretary of labor
23 shall be liable for a penalty in the amount equal to 25% of the amount of
24 benefits unlawfully received. Notwithstanding any other provision of law,
25 such penalty shall be deposited into the employment security trust fund.

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

30 (i) For any week of unemployment on the basis of service in an
31 instructional, research or principal administrative capacity for an
32 educational institution as defined in K.S.A. 44-703(v), and amendments
33 thereto, if such week begins during the period between two successive
34 academic years or terms or, when an agreement provides instead for a
35 similar period between two regular but not successive terms during such
36 period or during a period of paid sabbatical leave provided for in the
37 individual's contract, if the individual performs such services in the first of
38 such academic years or terms and there is a contract or a reasonable
39 assurance that such individual will perform services in any such capacity
40 for any educational institution in the second of such academic years or
41 terms.

42 (j) For any week of unemployment on the basis of service in any
43 capacity other than service in an instructional, research, or administrative

1 capacity in an educational institution, as defined in K.S.A. 44-703(v), and
2 amendments thereto, if such week begins during the period between two
3 successive academic years or terms if the individual performs such
4 services in the first of such academic years or terms and there is a
5 reasonable assurance that the individual will perform such services in the
6 second of such academic years or terms, except that if benefits are denied
7 to the individual under this subsection and the individual was not offered
8 an opportunity to perform such services for the educational institution for
9 the second of such academic years or terms, such individual shall be
10 entitled to a retroactive payment of benefits for each week ~~for which that~~
11 the individual filed a timely claim for benefits *for* and ~~for which that~~
12 benefits were denied solely by reason of this subsection.

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

21 (l) For any week of unemployment on the basis of any services,
22 substantially all of which consist of participating in sports or athletic
23 events or training or preparing to so participate, if such week begins during
24 the period between two successive sport seasons or similar period if such
25 individual performed services in the first of such seasons or similar periods
26 and there is a reasonable assurance that such individual will perform such
27 services in the later of such seasons or similar periods.

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

43 (n) For any week in which an individual is receiving a governmental

1 or other pension, retirement or retired pay, annuity or other similar
2 periodic payment under a plan maintained by a base period employer and
3 to which the entire contributions were provided by such employer, except
4 that: (1) If the entire contributions to such plan were provided by the base
5 period employer but such individual's weekly benefit amount exceeds such
6 governmental or other pension, retirement or retired pay, annuity or other
7 similar periodic payment attributable to such week, the weekly benefit
8 amount payable to the individual shall be reduced, but not below zero, by
9 an amount equal to the amount of such pension, retirement or retired pay,
10 annuity or other similar periodic payment which is attributable to such
11 week; or (2) if only a portion of contributions to such plan were provided
12 by the base period employer, the weekly benefit amount payable to such
13 individual for such week shall be reduced, but not below zero, by the
14 prorated weekly amount of the pension, retirement or retired pay, annuity
15 or other similar periodic payment after deduction of that portion of the
16 pension, retirement or retired pay, annuity or other similar periodic
17 payment that is directly attributable to the percentage of the contributions
18 made to the plan by such individual; or (3) if the entire contributions to the
19 plan were provided by such individual, or by the individual and an
20 employer, or any person or organization, who is not a base period
21 employer, no reduction in the weekly benefit amount payable to the
22 individual for such week shall be made under this subsection; or (4)
23 whatever portion of contributions to such plan were provided by the base
24 period employer, if the services performed for the employer by such
25 individual during the base period, or remuneration received for the
26 services, did not affect the individual's eligibility for, or increased the
27 amount of, such pension, retirement or retired pay, annuity or other similar
28 periodic payment, no reduction in the weekly benefit amount payable to
29 the individual for such week shall be made under this subsection. No
30 reduction shall be made for payments made under the social security act or
31 railroad retirement act of 1974.

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

40 (p) For any week of unemployment on the basis of service as a school
41 bus or other motor vehicle driver employed by a private contractor to
42 transport pupils, students and school personnel to or from school-related
43 functions or activities for an educational institution, as defined in K.S.A.

1 44-703(v), and amendments thereto, if such week begins during the period
2 between two successive academic years or during a similar period between
3 two regular terms, whether or not successive, if the individual has a
4 contract or contracts, or a reasonable assurance thereof, to perform
5 services in any such capacity with a private contractor for any educational
6 institution for both such academic years or both such terms. An individual
7 shall not be disqualified for benefits as provided in this subsection for any
8 week of unemployment on the basis of service as a bus or other motor
9 vehicle driver employed by a private contractor to transport persons to or
10 from nonschool-related functions or activities.

11 (q) For any week of unemployment on the basis of services
12 performed by the individual in any capacity and under any of the
13 circumstances described in subsection (i), (j), (k) or (o) ~~which that~~ are
14 provided to or on behalf of an educational institution, as defined in K.S.A.
15 44-703(v), and amendments thereto, while the individual is in the employ
16 of an employer ~~which that~~ is a governmental entity, Indian tribe or any
17 employer described in section 501(c)(3) of the federal internal revenue
18 code of 1986 ~~which that~~ is exempt from income under section 501(a) of
19 the code.

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

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

27 (2) the individual is attending approved training as defined in K.S.A.
28 44-703(s), and amendments thereto; or

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

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

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

43 (2) If an employer chooses to withhold from a back pay award or

1 settlement, amounts paid to a claimant while they claimed unemployment
2 benefits, such employer shall pay the department the amount withheld.
3 With respect to such amount, the secretary shall have available all of the
4 collection remedies authorized or provided in K.S.A. 44-717, and
5 amendments thereto.

6 (t) (1) Any applicant for or recipient of unemployment benefits who
7 tests positive for unlawful use of a controlled substance or controlled
8 substance analog shall be required to complete a substance abuse treatment
9 program approved by the secretary of labor, secretary of commerce or
10 secretary for children and families, and a job skills program approved by
11 the secretary of labor, secretary of commerce or the secretary for children
12 and families. Subject to applicable federal laws, any applicant for or
13 recipient of unemployment benefits who fails to complete or refuses to
14 participate in the substance abuse treatment program or job skills program
15 as required under this subsection shall be ineligible to receive
16 unemployment benefits until completion of such substance abuse
17 treatment and job skills programs. Upon completion of both substance
18 abuse treatment and job skills programs, such applicant for or recipient of
19 unemployment benefits may be subject to periodic drug screening, as
20 determined by the secretary of labor. Upon a second positive test for
21 unlawful use of a controlled substance or controlled substance analog, an
22 applicant for or recipient of unemployment benefits shall be ordered to
23 complete again a substance abuse treatment program and job skills
24 program, and shall be terminated from unemployment benefits for a period
25 of 12 months, or until such applicant for or recipient of unemployment
26 benefits completes both substance abuse treatment and job skills programs,
27 whichever is later. Upon a third positive test for unlawful use of a
28 controlled substance or controlled substance analog, an applicant for or a
29 recipient of unemployment benefits shall be terminated from receiving
30 unemployment benefits, subject to applicable federal law.

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

37 (u) If the individual was found not to have a disqualifying
38 adjudication or conviction under K.S.A. 39-970 or 65-5117, and
39 amendments thereto, was hired and then was subsequently convicted of a
40 disqualifying felony under K.S.A. 39-970 or 65-5117, and amendments
41 thereto, and discharged pursuant to K.S.A. 39-970 or 65-5117, and
42 amendments thereto. The disqualification shall begin ~~the day following the~~
43 ~~separation~~ *on the effective date of the claim* and shall continue until after

1 the individual becomes reemployed and has had earnings from insured
2 work of at least three times the individual's determined weekly benefit
3 amount.

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

11 Sec. 2. K.S.A. 2020 Supp. 44-706 is hereby repealed.

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