

**SENATE BILL No. 38**

By Committee on Federal and State Affairs

1-22

1 AN ACT concerning the employment security law; relating to benefits for  
2 privately contracted school bus drivers; amending K.S.A. 2018 Supp.  
3 44-706 and repealing the existing section.  
4

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

6 Section 1. K.S.A. 2018 Supp. 44-706 is hereby amended to read as  
7 follows: 44-706. The secretary shall examine whether an individual has  
8 separated from employment for each week claimed. The secretary shall  
9 apply the provisions of this section to the individual's most recent  
10 employment prior to the week claimed. An individual shall be disqualified  
11 for benefits:

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

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

1 "health care provider" means any person licensed by the proper licensing  
2 authority of any state to engage in the practice of medicine and surgery,  
3 osteopathy, chiropractic, dentistry, optometry, podiatry or psychology;

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

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

8 (4) the spouse of an individual who is a member of the armed forces  
9 of the United States who left work because of the voluntary or involuntary  
10 transfer of the individual's spouse from one job to another job, which is for  
11 the same employer or for a different employer, at a geographic location  
12 which makes it unreasonable for the individual to continue work at the  
13 individual's job. For the purposes of this provision the term "armed forces"  
14 means active duty in the army, navy, marine corps, air force, coast guard or  
15 any branch of the military 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: (A) The safety measures used or the lack thereof; and (B) the condition  
27 of equipment or lack of proper equipment; no work shall be considered  
28 hazardous if the working conditions surrounding the individual's work are  
29 the same or substantially the same as the working conditions generally  
30 prevailing among individuals performing the same or similar work for  
31 other employers engaged in the same or similar type of activity;

32 (6) the individual left work to enter training approved under section  
33 236(a)(1) of the federal trade act of 1974, provided the work left is not of a  
34 substantially equal or higher skill level than the individual's past adversely  
35 affected employment, as defined for purposes of the federal trade act of  
36 1974, and wages for ~~such~~ *the* work are not less than 80% of the  
37 individual's average weekly wage as determined for the purposes of the  
38 federal trade act of 1974;

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

43 (8) the individual left work to accept better work; each determination

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

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

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

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

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

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

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

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

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

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

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

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

41 (ii) a police record documenting the abuse;

42 (iii) documentation that the abuser has been convicted of one or more  
43 of the offenses enumerated in articles 34 and 35 of chapter 21 of the

1 Kansas Statutes Annotated, prior to their repeal, or articles 54 or 55 of  
2 chapter 21 of the Kansas Statutes Annotated, or K.S.A. 2018 Supp. 21-  
3 6104, 21-6325, 21-6326 or 21-6418 through 21-6422, and amendments  
4 thereto, where the victim was a family or household member;

5 (iv) medical documentation of the abuse;

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

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

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

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

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

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

42 (B) For the purposes of this subsection, misconduct shall include, but  
43 not be limited to, violation of the employer's reasonable attendance

1 expectations if the facts show:

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

3 (ii) the individual had knowledge of the employer's attendance  
4 expectation; and

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

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

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

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

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

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

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

28 (a) The test was either:

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

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

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

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

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

42 (b) the test sample was collected either:

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

1 seq.;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

8 (C) For purposes of this subsection:

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

11 (ii) "alcoholic liquor" shall be defined as provided in K.S.A. 41-102,  
12 and amendments thereto;

13 (iii) "cereal malt beverage" shall be defined as provided in K.S.A. 41-  
14 2701, and amendments thereto;

15 (iv) "chemical test" shall include, but is not limited to, tests of urine,  
16 blood or saliva;

17 (v) "controlled substance" shall be defined as provided in K.S.A.  
18 2018 Supp. 21-5701, and amendments thereto;

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

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

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

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

43 (A) The employer discharged the individual after learning the

1 individual was seeking other work or when the individual gave notice of  
2 future intent to quit, except that the individual shall be disqualified after  
3 the time at which ~~such~~ *the* individual intended to quit and any individual  
4 who commits misconduct after ~~such~~ *the* individual gives notice ~~to such~~ *of*  
5 *the* individual's intent to quit shall be disqualified;

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

8 (i) Inefficiency;

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

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

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

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

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

17 (c) If the individual has failed, without good cause, to either apply for  
18 suitable work when so directed by the employment office of the secretary  
19 of labor, or to accept suitable work when offered to the individual by the  
20 employment office, the secretary of labor, or an employer, ~~such~~ *the*  
21 disqualification shall begin with the week in which ~~such~~ *the* failure  
22 occurred and shall continue until the individual becomes reemployed and  
23 has had earnings from insured work of at least three times ~~such~~ *the*  
24 individual's determined weekly benefit amount. In determining whether or  
25 not any work is suitable for an individual, the secretary of labor, or a  
26 person or persons designated by the secretary, shall consider the degree of  
27 risk involved to health, safety and morals, physical fitness and prior  
28 training, experience and prior earnings, length of unemployment and  
29 prospects for securing local work in the individual's customary occupation  
30 or work for which the individual is reasonably fitted by training or  
31 experience, and the distance of the available work from the individual's  
32 residence. Notwithstanding any other provisions of this act, an otherwise  
33 eligible individual shall not be disqualified for refusing an offer of suitable  
34 employment, or failing to apply for suitable employment when notified by  
35 an employment office, or for leaving the individual's most recent work  
36 accepted during approved training, including training approved under  
37 section 236(a)(1) of the trade act of 1974, if the acceptance of or applying  
38 for suitable employment or continuing ~~such~~ *the individual's most recent*  
39 work would require the individual to terminate approved training and no  
40 work shall be deemed suitable and benefits shall not be denied under this  
41 act to any otherwise eligible individual for refusing to accept new work  
42 under any of the following conditions: (1) If the position offered is vacant  
43 due directly to a strike, lockout or other labor dispute; (2) if the



1 remuneration, hours or other conditions of the work offered are  
2 substantially less favorable to the individual than those prevailing for  
3 similar work in the locality; (3) if as a condition of being employed, the  
4 individual would be required to join or to resign from or refrain from  
5 joining any labor organization; and (4) if the individual left employment as  
6 a result of domestic violence, and the position offered does not reasonably  
7 accommodate the individual's physical, psychological, safety, or legal  
8 needs relating to ~~such~~ the domestic violence.

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

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

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

1 United States.

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

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

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

35 (j) For any week of unemployment on the basis of service in any  
36 capacity other than service in an instructional, research, or administrative  
37 capacity in an educational institution, as defined in K.S.A. 44-703(v), and  
38 amendments thereto, if ~~such~~ *the* week begins during the period between  
39 two successive academic years or terms if the individual performs ~~such~~ *the*  
40 services in the first of ~~such~~ *the successive* academic years or terms and  
41 there is a reasonable assurance that the individual will perform ~~such~~ *the*  
42 services in the second of ~~such~~ *the successive* academic years or terms,  
43 except that if benefits are denied to the individual under this subsection

1 and the individual was not offered an opportunity to perform ~~such the~~  
2 services for the educational institution for the second of ~~such the~~  
3 successive academic years or terms, ~~such the~~ individual shall be entitled to  
4 a retroactive payment of benefits for each week for which the individual  
5 filed a timely claim for benefits and for which benefits were denied solely  
6 by reason of this subsection.

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

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

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

38 (n) For any week in which an individual is receiving a governmental  
39 or other pension, retirement or retired pay, annuity or other similar  
40 periodic payment under a plan maintained by a base period employer and  
41 to which the entire contributions were provided by ~~such the~~ employer,  
42 except that: (1) If the entire contributions to ~~such the~~ plan were provided  
43 by the base period employer but ~~such the~~ individual's weekly benefit

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

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

35 (p) For any ~~week of unemployment on the basis of service as a school~~  
36 ~~bus or other motor vehicle driver employed by a private contractor to~~  
37 ~~transport pupils, students and school personnel to or from school-related~~  
38 ~~functions or activities for an educational institution, as defined in K.S.A.~~  
39 ~~44-703(v), and amendments thereto, if such week begins during the period~~  
40 ~~between two successive academic years or during a similar period between~~  
41 ~~two regular terms, whether or not successive, if the individual has a~~  
42 ~~contract or contracts, or a reasonable assurance thereof, to perform~~  
43 ~~services in any such capacity with a private contractor for any educational~~

1 institution for both such academic years or both such terms. An individual  
 2 shall not be disqualified for benefits as provided in this subsection for any  
 3 week of unemployment on the basis of service as a bus or other motor  
 4 vehicle driver employed by a private contractor to transport persons to or  
 5 from nonschool-related functions or activities.

6 (q)—For any week of unemployment on the basis of services  
 7 performed by the individual in any capacity and under any of the  
 8 circumstances described in subsection (i), (j), (k) or (o) which are provided  
 9 to or on behalf of an educational institution, as defined in K.S.A. 44-  
 10 703(v), and amendments thereto, while the individual is in the employ of  
 11 an employer which is a governmental entity, Indian tribe or any employer  
 12 described in section 501(c)(3) of the federal internal revenue code of 1986  
 13 which is exempt from income under section 501(a) of the code.

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

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

21 (2) the individual is attending approved training as defined in K.S.A.  
 22 44-703(s), and amendments thereto; or

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

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

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

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

43 (†)(s) (1) Any applicant for or recipient of unemployment benefits

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

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

31 ~~(t)~~(t) If the individual was found not to have a disqualifying  
32 adjudication or conviction under K.S.A. 39-970 or 65-5117, and  
33 amendments thereto, was hired and then was subsequently convicted of a  
34 disqualifying felony under K.S.A. 39-970 or 65-5117, and amendments  
35 thereto, and discharged pursuant to K.S.A. 39-970 or 65-5117, and  
36 amendments thereto. The disqualification shall begin the day following the  
37 separation and shall continue until after the individual becomes  
38 reemployed and has had earnings from insured work of at least three times  
39 the individual's determined weekly benefit amount.

40 ~~(u)~~(u) Notwithstanding the provisions of any subsection, an  
41 individual shall not be disqualified for ~~such~~ a week of part-time  
42 employment in a substitute capacity for an educational institution if ~~such~~  
43 the individual's most recent employment prior to the individual's benefit

1 year begin date was for a non-educational institution and ~~such the~~  
2 individual demonstrates application for work in ~~such the~~ individual's  
3 customary occupation or for work for which the individual is reasonably  
4 fitted by training or experience.

5 Sec. 2. K.S.A. 2018 Supp. 44-706 is hereby repealed.

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