

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 (†)(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)~~(i) 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.