

## HOUSE BILL No. 2141

By Committee on Commerce and Labor

1-28

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9 AN ACT concerning employment security law; relating to unemploy-  
10 ment benefits for privately contracted school bus drivers; amending  
11 K.S.A. 2008 Supp. 44-706 and repealing the existing section.  
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13 *Be it enacted by the Legislature of the State of Kansas:*

14 Section 1. K.S.A. 2008 Supp. 44-706 is hereby amended to read as  
15 follows: 44-706. An individual shall be disqualified for benefits:

16 (a) If the individual left work voluntarily without good cause attrib-  
17 utable to the work or the employer, subject to the other provisions of this  
18 subsection (a). Failure to return to work after expiration of approved  
19 personal or medical leave, or both, shall be considered a voluntary res-  
20 ignation. After a temporary job assignment, failure of an individual to  
21 affirmatively request an additional assignment on the next succeeding  
22 workday, if required by the employment agreement, after completion of  
23 a given work assignment, shall constitute leaving work voluntarily. The  
24 disqualification shall begin the day following the separation and shall con-  
25 tinue until after the individual has become reemployed and has had earn-  
26 ings from insured work of at least three times the individual's weekly  
27 benefit amount. An individual shall not be disqualified under this sub-  
28 section (a) if:

29 (1) The individual was forced to leave work because of illness or injury  
30 upon the advice of a licensed and practicing health care provider and,  
31 upon learning of the necessity for absence, immediately notified the em-  
32 ployer thereof, or the employer consented to the absence, and after re-  
33 covery from the illness or injury, when recovery was certified by a prac-  
34 ticing health care provider, the individual returned to the employer and  
35 offered to perform services and the individual's regular work or compa-  
36 rable and suitable work was not available; as used in this paragraph (1)  
37 "health care provider" means any person licensed by the proper licensing  
38 authority of any state to engage in the practice of medicine and surgery,  
39 osteopathy, chiropractic, dentistry, optometry, podiatry or psychology;

40 (2) the individual left temporary work to return to the regular  
41 employer;

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

- 1 (4) the individual left work because of the voluntary or involuntary  
2 transfer of the individual's spouse from one job to another job, which is  
3 for the same employer or for a different employer, at a geographic loca-  
4 tion which makes it unreasonable for the individual to continue work at  
5 the individual's job;
- 6 (5) the individual left work because of hazardous working conditions;  
7 in determining whether or not working conditions are hazardous for an  
8 individual, the degree of risk involved to the individual's health, safety  
9 and morals, the individual's physical fitness and prior training and the  
10 working conditions of workers engaged in the same or similar work for  
11 the same and other employers in the locality shall be considered; as used  
12 in this paragraph (5), "hazardous working conditions" means working con-  
13 ditions that could result in a danger to the physical or mental well-being  
14 of the individual; each determination as to whether hazardous working  
15 conditions exist shall include, but shall not be limited to, a consideration  
16 of (A) the safety measures used or the lack thereof, and (B) the condition  
17 of equipment or lack of proper equipment; no work shall be considered  
18 hazardous if the working conditions surrounding the individual's work are  
19 the same or substantially the same as the working conditions generally  
20 prevailing among individuals performing the same or similar work for  
21 other employers engaged in the same or similar type of activity;
- 22 (6) the individual left work to enter training approved under section  
23 236(a)(1) of the federal trade act of 1974, provided the work left is not  
24 of a substantially equal or higher skill level than the individual's past  
25 adversely affected employment (as defined for purposes of the federal  
26 trade act of 1974), and wages for such work are not less than 80% of the  
27 individual's average weekly wage as determined for the purposes of the  
28 federal trade act of 1974;
- 29 (7) the individual left work because of unwelcome harassment of the  
30 individual by the employer or another employee of which the employing  
31 unit had knowledge;
- 32 (8) the individual left work to accept better work; each determination  
33 as to whether or not the work accepted is better work shall include, but  
34 shall not be limited to, consideration of (A) the rate of pay, the hours of  
35 work and the probable permanency of the work left as compared to the  
36 work accepted, (B) the cost to the individual of getting to the work left  
37 in comparison to the cost of getting to the work accepted, and (C) the  
38 distance from the individual's place of residence to the work accepted in  
39 comparison to the distance from the individual's residence to the work  
40 left;
- 41 (9) the individual left work as a result of being instructed or requested  
42 by the employer, a supervisor or a fellow employee to perform a service  
43 or commit an act in the scope of official job duties which is in violation

1 of an ordinance or statute;

2 (10) the individual left work because of a violation of the work agree-  
3 ment by the employing unit and, before the individual left, the individual  
4 had exhausted all remedies provided in such agreement for the settlement  
5 of disputes before terminating;

6 (11) after making reasonable efforts to preserve the work, the indi-  
7 vidual left work due to a personal emergency of such nature and com-  
8 pelling urgency that it would be contrary to good conscience to impose a  
9 disqualification; or

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

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

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

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

18 (iv) the individual's need to leave employment as a condition of re-  
19 ceiving services or shelter from an agency which provides support services  
20 or shelter to victims of domestic violence; or

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

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

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

29 (ii) a police record documenting the abuse; or

30 (iii) documentation that the abuser has been convicted of one or more  
31 of the offenses enumerated in articles 34 and 35 of chapter 21 of the  
32 Kansas Statutes Annotated, and amendments thereto, where the victim  
33 was a family or household member; or

34 (iv) medical documentation of the abuse; or

35 (v) a statement provided by a counselor, social worker, health care  
36 provider, clergy, shelter worker, legal advocate, domestic violence or sex-  
37 ual assault advocate or other professional who has assisted the individual  
38 in dealing with the effects of abuse on the individual or the individual's  
39 family; or

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

41 (C) No evidence of domestic violence experienced by an individual,  
42 including the individual's statement and corroborating evidence, shall be  
43 disclosed by the department of labor unless consent for disclosure is given

1 by the individual.

2 (b) If the individual has been discharged for misconduct connected  
3 with the individual's work. The disqualification shall begin the day follow-  
4 ing the separation and shall continue until after the individual becomes  
5 reemployed and has had earnings from insured work of at least three  
6 times the individual's determined weekly benefit amount, except that if  
7 an individual is discharged for gross misconduct connected with the in-  
8 dividual's work, such individual shall be disqualified for benefits until such  
9 individual again becomes employed and has had earnings from insured  
10 work of at least eight times such individual's determined weekly benefit  
11 amount. In addition, all wage credits attributable to the employment from  
12 which the individual was discharged for gross misconduct connected with  
13 the individual's work shall be canceled. No such cancellation of wage  
14 credits shall affect prior payments made as a result of a prior separation.

15 (1) For the purposes of this subsection (b), "misconduct" is defined  
16 as a violation of a duty or obligation reasonably owed the employer as a  
17 condition of employment. The term "gross misconduct" as used in this  
18 subsection (b) shall be construed to mean conduct evincing extreme, will-  
19 ful or wanton misconduct as defined by this subsection (b). Failure of the  
20 employee to notify the employer of an absence shall be considered prima  
21 facie evidence of a violation of a duty or obligation reasonably owed the  
22 employer as a condition of employment.

23 (2) For the purposes of this subsection (b), the use of or impairment  
24 caused by alcoholic liquor, a cereal malt beverage or a nonprescribed  
25 controlled substance by an individual while working shall be conclusive  
26 evidence of misconduct and the possession of alcoholic liquor, a cereal  
27 malt beverage or a nonprescribed controlled substance by an individual  
28 while working shall be prima facie evidence of conduct which is a violation  
29 of a duty or obligation reasonably owed to the employer as a condition of  
30 employment. Alcoholic liquor shall be defined as provided in K.S.A. 41-  
31 102 and amendments thereto. Cereal malt beverage shall be defined as  
32 provided in K.S.A. 41-2701 and amendments thereto. Controlled sub-  
33 stance shall be defined as provided in K.S.A. 65-4101 and amendments  
34 thereto of the uniform controlled substances act. As used in this subsec-  
35 tion (b)(2), "required by law" means required by a federal or state law, a  
36 federal or state rule or regulation having the force and effect of law, a  
37 county resolution or municipal ordinance, or a policy relating to public  
38 safety adopted in open meeting by the governing body of any special  
39 district or other local governmental entity. Chemical test shall include,  
40 but is not limited to, tests of urine, blood or saliva. A positive chemical  
41 test shall mean a chemical result showing a concentration at or above the  
42 levels listed in K.S.A. 44-501, and amendments thereto, for the drugs or  
43 abuse listed therein. A positive breath test shall mean a test result showing

1 an alcohol concentration of .04 or greater. Alcohol concentration means  
2 the number of grams of alcohol per 210 liters of breath. An individual's  
3 refusal to submit to a chemical test or breath alcohol test shall be con-  
4 clusive evidence of misconduct if the test meets the standards of the drug  
5 free workplace act, 41 U.S.C. 701 et seq.; the test was administered as  
6 part of an employee assistance program or other drug or alcohol treat-  
7 ment program in which the employee was participating voluntarily or as  
8 a condition of further employment; the test was otherwise required by  
9 law and the test constituted a required condition of employment for the  
10 individual's job; the test was requested pursuant to a written policy of the  
11 employer of which the employee had knowledge and was a required con-  
12 dition of employment; or there was probable cause to believe that the  
13 individual used, possessed or was impaired by alcoholic liquor, a cereal  
14 malt beverage or a controlled substance while working. A positive breath  
15 alcohol test or a positive chemical test shall be conclusive evidence to  
16 prove misconduct if the following conditions are met:

17 (A) Either (i) the test was required by law and was administered pur-  
18 suant to the drug free workplace act, 41 U.S.C. 701 et seq., (ii) the test  
19 was administered as part of an employee assistance program or other drug  
20 or alcohol treatment program in which the employee was participating  
21 voluntarily or as a condition of further employment, (iii) the test was  
22 requested pursuant to a written policy of the employer of which the em-  
23 ployee had knowledge and was a required condition of employment, (iv)  
24 the test was required by law and the test constituted a required condition  
25 of employment for the individual's job, or (v) there was probable cause  
26 to believe that the individual used, had possession of, or was impaired by  
27 alcoholic liquor, the cereal malt beverage or the controlled substance  
28 while working;

29 (B) the test sample was collected either (i) as prescribed by the drug  
30 free workplace act, 41 U.S.C. 701 et seq., (ii) as prescribed by an em-  
31 ployee assistance program or other drug or alcohol treatment program in  
32 which the employee was participating voluntarily or as a condition of  
33 further employment, (iii) as prescribed by the written policy of the em-  
34 ployer of which the employee had knowledge and which constituted a  
35 required condition of employment, (iv) as prescribed by a test which was  
36 required by law and which constituted a required condition of employ-  
37 ment for the individual's job, or (v) at a time contemporaneous with the  
38 events establishing probable cause;

39 (C) the collecting and labeling of a chemical test sample was per-  
40 formed by a licensed health care professional or any other individual  
41 certified pursuant to paragraph (b)(2)(F) or authorized to collect or label  
42 test samples by federal or state law, or a federal or state rule or regulation  
43 having the force or effect of law, including law enforcement personnel;

- 1 (D) the chemical test was performed by a laboratory approved by the  
2 United States department of health and human services or licensed by  
3 the department of health and environment, except that a blood sample  
4 may be tested for alcohol content by a laboratory commonly used for that  
5 purpose by state law enforcement agencies;
- 6 (E) the chemical test was confirmed by gas chromatography, gas  
7 chromatography-mass spectroscopy or other comparably reliable analyt-  
8 ical method, except that no such confirmation is required for a blood  
9 alcohol sample or a breath alcohol test;
- 10 (F) the breath alcohol test was administered by an individual trained  
11 to perform breath tests, the breath testing instrument used was certified  
12 and operated strictly according to description provided by the manufac-  
13 turers and the reliability of the instrument performance was assured by  
14 testing with alcohol standards; and
- 15 (G) the foundation evidence must establish, beyond a reasonable  
16 doubt, that the test results were from the sample taken from the  
17 individual.
- 18 (3) (A) For the purposes of this subsection (b), misconduct shall in-  
19 clude, but not be limited to repeated absence, including incarceration,  
20 resulting in absence from work of three days or longer, excluding Satur-  
21 days, Sundays and legal holidays, and lateness, from scheduled work if  
22 the facts show:
- 23 (i) The individual was absent without good cause;
- 24 (ii) the absence was in violation of the employer's written absenteeism  
25 policy;
- 26 (iii) the employer gave or sent written notice to the individual, at the  
27 individual's last known address, that future absence may or will result in  
28 discharge; and
- 29 (iv) the employee had knowledge of the employer's written absen-  
30 teeism policy.
- 31 (B) For the purposes of this subsection (b), if an employee disputes  
32 being absent without good cause, the employee shall present evidence  
33 that a majority of the employee's absences were for good cause. If the  
34 employee alleges that the employee's repeated absences were the result  
35 of health related issues, such evidence shall include documentation from  
36 a licensed and practicing health care provider as defined in subsection  
37 (a)(1).
- 38 (4) An individual shall not be disqualified under this subsection if the  
39 individual is discharged under the following circumstances:
- 40 (A) The employer discharged the individual after learning the indi-  
41 vidual was seeking other work or when the individual gave notice of future  
42 intent to quit;
- 43 (B) the individual was making a good-faith effort to do the assigned

1 work but was discharged due to: (i) Inefficiency, (ii) unsatisfactory per-  
2 formance due to inability, incapacity or lack of training or experience, (iii)  
3 isolated instances of ordinary negligence or inadvertence, (iv) good-faith  
4 errors in judgment or discretion, or (v) unsatisfactory work or conduct  
5 due to circumstances beyond the individual's control; or  
6 (C) the individual's refusal to perform work in excess of the contract  
7 of hire.

8 (c) If the individual has failed, without good cause, to either apply  
9 for suitable work when so directed by the employment office of the sec-  
10 retary of labor, or to accept suitable work when offered to the individual  
11 by the employment office, the secretary of labor, or an employer, such  
12 disqualification shall begin with the week in which such failure occurred  
13 and shall continue until the individual becomes reemployed and has had  
14 earnings from insured work of at least three times such individual's de-  
15 termined weekly benefit amount. In determining whether or not any work  
16 is suitable for an individual, the secretary of labor, or a person or persons  
17 designated by the secretary, shall consider the degree of risk involved to  
18 health, safety and morals, physical fitness and prior training, experience  
19 and prior earnings, length of unemployment and prospects for securing  
20 local work in the individual's customary occupation or work for which the  
21 individual is reasonably fitted by training or experience, and the distance  
22 of the available work from the individual's residence. Notwithstanding  
23 any other provisions of this act, an otherwise eligible individual shall not  
24 be disqualified for refusing an offer of suitable employment, or failing to  
25 apply for suitable employment when notified by an employment office,  
26 or for leaving the individual's most recent work accepted during approved  
27 training, including training approved under section 236(a)(1) of the trade  
28 act of 1974, if the acceptance of or applying for suitable employment or  
29 continuing such work would require the individual to terminate approved  
30 training and no work shall be deemed suitable and benefits shall not be  
31 denied under this act to any otherwise eligible individual for refusing to  
32 accept new work under any of the following conditions: (1) If the position  
33 offered is vacant due directly to a strike, lockout or other labor dispute;  
34 (2) if the remuneration, hours or other conditions of the work offered are  
35 substantially less favorable to the individual than those prevailing for sim-  
36 ilar work in the locality; (3) if as a condition of being employed, the  
37 individual would be required to join or to resign from or refrain from  
38 joining any labor organization; (4) if the individual left employment as a  
39 result of domestic violence, and the position offered does not reasonably  
40 accommodate the individual's physical, psychological, safety, and/or legal  
41 needs relating to such domestic violence.

42 (d) For any week with respect to which the secretary of labor, or a  
43 person or persons designated by the secretary, finds that the individual's

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

24 (e) For any week with respect to which or a part of which the indi-  
25 vidual has received or is seeking unemployment benefits under the un-  
26 employment compensation law of any other state or of the United States,  
27 except that if the appropriate agency of such other state or the United  
28 States finally determines that the individual is not entitled to such un-  
29 employment benefits, this disqualification shall not apply.

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

35 (g) For the period of one year beginning with the first day following  
36 the last week of unemployment for which the individual received benefits,  
37 or for one year from the date the act was committed, whichever is the  
38 later, if the individual, or another in such individual's behalf with the  
39 knowledge of the individual, has knowingly made a false statement or  
40 representation, or has knowingly failed to disclose a material fact to obtain  
41 or increase benefits under this act or any other unemployment compen-  
42 sation law administered by the secretary of labor.

43 (h) For any week with respect to which the individual is receiving



1 compensation for temporary total disability or permanent total disability  
2 under the workmen's compensation law of any state or under a similar  
3 law of the United States.

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

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

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

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

1 such services in the later of such seasons or similar periods.

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

17 (n) For any week in which an individual is receiving a governmental  
18 or other pension, retirement or retired pay, annuity or other similar pe-  
19 riodic payment under a plan maintained by a base period employer and  
20 to which the entire contributions were provided by such employer, except  
21 that: (1) If the entire contributions to such plan were provided by the  
22 base period employer but such individual's weekly benefit amount ex-  
23 ceeds such governmental or other pension, retirement or retired pay,  
24 annuity or other similar periodic payment attributable to such week, the  
25 weekly benefit amount payable to the individual shall be reduced (but  
26 not below zero) by an amount equal to the amount of such pension,  
27 retirement or retired pay, annuity or other similar periodic payment  
28 which is attributable to such week; or (2) if only a portion of contributions  
29 to such plan were provided by the base period employer, the weekly  
30 benefit amount payable to such individual for such week shall be reduced  
31 (but not below zero) by the prorated weekly amount of the pension, re-  
32 tirement or retired pay, annuity or other similar periodic payment after  
33 deduction of that portion of the pension, retirement or retired pay, an-  
34 nuity or other similar periodic payment that is directly attributable to the  
35 percentage of the contributions made to the plan by such individual; or  
36 (3) if the entire contributions to the plan were provided by such individ-  
37 ual, or by the individual and an employer (or any person or organization)  
38 who is not a base period employer, no reduction in the weekly benefit  
39 amount payable to the individual for such week shall be made under this  
40 subsection (n); or (4) whatever portion of contributions to such plan were  
41 provided by the base period employer, if the services performed for the  
42 employer by such individual during the base period, or remuneration  
43 received for the services, did not affect the individual's eligibility for, or

1 increased the amount of, such pension, retirement or retired pay, annuity  
2 or other similar periodic payment, no reduction in the weekly benefit  
3 amount payable to the individual for such week shall be made under this  
4 subsection (n). No reduction shall be made for payments made under the  
5 social security act or railroad retirement act of 1974.

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

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

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

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

1 subsection (r) provided:

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

4 (2) the individual is attending approved training as defined in sub-  
5 section (s) of K.S.A. 44-703 and amendments thereto; or

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

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

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

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

26 (t) If the individual has been discharged for failing a preemployment  
27 drug screen required by the employer and if such discharge occurs not  
28 later than seven days after the employer is notified of the results of such  
29 drug screen. The disqualification shall begin the day following the sepa-  
30 ration and shall continue until after the individual becomes reemployed  
31 and has had earnings from insured work of at least three times the indi-  
32 vidual's determined weekly benefit amount.

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

43 Sec. 2. K.S.A. 2008 Supp. 44-706 is hereby repealed.

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