

HOUSE BILL No. 2785

By Committee on Appropriations

3-16

1 AN ACT concerning unemployment benefits; regarding the period of
2 disqualification upon false statement or representation, or knowing
3 failure to disclose a material fact; amending K.S.A. 2017 Supp. 44-706
4 and repealing the existing section.

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

7 Section 1. K.S.A. 2017 Supp. 44-706 is hereby amended to read as
8 follows: 44-706. The secretary shall examine whether an individual has
9 separated from employment for each week claimed. The secretary shall
10 apply the provisions of this section to the individual's most recent
11 employment prior to the week claimed. An individual shall be disqualified
12 for benefits:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

42 (ii) a police record documenting the abuse;

43 (iii) documentation that the abuser has been convicted of one or more

1 of the offenses enumerated in articles 34 and 35 of chapter 21 of the
 2 Kansas Statutes Annotated, prior to their repeal, or articles 54 or 55 of
 3 chapter 21 of the Kansas Statutes Annotated, or K.S.A. 2017 Supp. 21-
 4 6104, 21-6325, 21-6326 or 21-6418 through 21-6422, and amendments
 5 thereto, where the victim was a family or household member;

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

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

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

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

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

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

43 (B) For the purposes of this subsection, misconduct shall include, but

1 not be limited to, violation of the employer's reasonable attendance
2 expectations if the facts show:

- 3 (i) The individual was absent or tardy without good cause;
- 4 (ii) the individual had knowledge of the employer's attendance
5 expectation; and
- 6 (iii) the employer gave notice to the individual that future absence or
7 tardiness may or will result in discharge.

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

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

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

- 23 (i) The use of alcoholic liquor, cereal malt beverage or a
24 nonprescribed controlled substance by an individual while working;
- 25 (ii) the impairment caused by alcoholic liquor, cereal malt beverage
26 or a nonprescribed controlled substance by an individual while working;
- 27 (iii) a positive breath alcohol test or a positive chemical test,
28 provided:
 - 29 (a) The test was either:
 - 30 (1) Required by law and was administered pursuant to the drug free
31 workplace act, 41 U.S.C. § 701 et seq.;
 - 32 (2) administered as part of an employee assistance program or other
33 drug or alcohol treatment program ~~in which~~ *that* the employee was
34 participating *in* voluntarily or as a condition of further employment;
 - 35 (3) requested pursuant to a written policy of the employer ~~of which~~
36 *that* the employee had knowledge *of* and was a required condition of
37 employment;
 - 38 (4) required by law and the test constituted a required condition of
39 employment for the individual's job; or
 - 40 (5) there was reasonable suspicion to believe that the individual used,
41 had possession of, or was impaired by alcoholic liquor, cereal malt
42 beverage or a nonprescribed controlled substance while working;
 - 43 (b) the test sample was collected either:

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

- 1 (c) the test was otherwise required by law and the test constituted a
- 2 required condition of employment for the individual's job;
- 3 (d) the test was requested pursuant to a written policy of the employer
- 4 ~~of which~~ *that* the employee had knowledge *of* and was a required
- 5 condition of employment; or
- 6 (e) there was reasonable suspicion to believe that the individual used,
- 7 possessed or was impaired by alcoholic liquor, cereal malt beverage or a
- 8 nonprescribed controlled substance while working;
- 9 (v) an individual's dilution or other tampering of a chemical test.
- 10 (C) For purposes of this subsection:
- 11 (i) "Alcohol concentration" means the number of grams of alcohol
- 12 per 210 liters of breath;
- 13 (ii) "alcoholic liquor" shall be defined as provided in K.S.A. 41-102,
- 14 and amendments thereto;
- 15 (iii) "cereal malt beverage" shall be defined as provided in K.S.A. 41-
- 16 2701, and amendments thereto;
- 17 (iv) "chemical test" shall include, but is not limited to, tests of urine,
- 18 blood or saliva;
- 19 (v) "controlled substance" shall be defined as provided in K.S.A.
- 20 2017 Supp. 21-5701, and amendments thereto;
- 21 (vi) "required by law" means required by a federal or state law, a
- 22 federal or state rule or regulation having the force and effect of law, a
- 23 county resolution or municipal ordinance, or a policy relating to public
- 24 safety adopted in an open meeting by the governing body of any special
- 25 district or other local governmental entity;
- 26 (vii) "positive breath test" shall mean a test result showing an alcohol
- 27 concentration of 0.04 or greater, or the levels listed in 49 C.F.R. part 40, if
- 28 applicable, unless the test was administered as part of an employee
- 29 assistance program or other drug or alcohol treatment program ~~in which~~
- 30 *that* the employee was participating *in* voluntarily or as a condition of
- 31 further employment, in which case "positive chemical test" shall mean a
- 32 test result showing an alcohol concentration at or above the levels
- 33 provided for in the assistance or treatment program;
- 34 (viii) "positive chemical test" shall mean a chemical result showing a
- 35 concentration at or above the levels listed in K.S.A. 44-501, and
- 36 amendments thereto, or 49 C.F.R. part 40, as applicable, for the drugs or
- 37 abuse listed therein, unless the test was administered as part of an
- 38 employee assistance program or other drug or alcohol treatment program
- 39 ~~in which~~ *that* the employee was participating *in* voluntarily or as a
- 40 condition of further employment, in which case "positive chemical test"
- 41 shall mean a chemical result showing a concentration at or above the
- 42 levels provided for in the assistance or treatment program.
- 43 (4) An individual shall not be disqualified under this subsection if the

1 individual is discharged under the following circumstances:

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

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

10 (i) Inefficiency;

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

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

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

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

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

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

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

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

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

42 (f) For any week ~~with respect to which~~ *that* the individual is entitled
43 to receive any unemployment allowance or compensation granted by the

1 United States under an act of congress to ex-service men and women in
2 recognition of former service with the military or naval services of the
3 United States.

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

21 (h) For any week ~~with respect to which~~ *that* the individual is
22 receiving compensation for temporary total disability or permanent total
23 disability under the workmen's compensation law of any state or under a
24 similar law of the United States.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

24 (2) the individual is attending approved training as defined in K.S.A.
25 44-703(s), and amendments thereto; or

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

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

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

40 (2) If an employer chooses to withhold from a back pay award or
41 settlement, amounts paid to a claimant while they claimed unemployment
42 benefits, ~~such that~~ employer shall pay the department the amount
43 withheld. With respect to ~~such the~~ amount, the secretary shall have

1 available all of the collection remedies authorized or provided in K.S.A.
2 44-717, and amendments thereto.

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

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

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

43 (v) Notwithstanding the provisions of any subsection, an individual

1 shall not be disqualified for ~~such~~ *the* week of part-time employment in a
2 substitute capacity for an educational institution if such individual's most
3 recent employment prior to the individual's benefit year begin date was for
4 a non-educational institution and such individual demonstrates application
5 for work in such individual's customary occupation or for work ~~for which~~
6 *that* the individual is reasonably fitted by training or experience.

7 Sec. 2. K.S.A. 2017 Supp. 44-706 is hereby repealed.

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