AN ACT concerning the employment security law; relating to
unemployment benefits for privately contracted school bus drivers;
amending K.S.A. 2010 Supp. 44-706 and repealing the existing
section.

Be it enacted by the Legislature of the State of Kansas:
Section 1. K.S.A. 2010 Supp. 44-706 is hereby amended to read as
follows: 44-706. An individual shall be disqualified for benefits:
(a) If the individual left work voluntarily without good cause
attributable to the work or the employer, subject to the other provisions of
this subsection (a). Failure to return to work after expiration of approved
personal or medical leave, or both, shall be considered a voluntary
resignation. After a temporary job assignment, failure of an individual to
affirmatively request an additional assignment on the next succeeding
workday, if required by the employment agreement, after completion of a
given work assignment, shall constitute leaving work voluntarily. The
disqualification shall begin the day following the separation and shall
continue until after the individual has become reemployed and has had
earnings from insured work of at least three times the individual's weekly
benefit amount. An individual shall not be disqualified under this
subsection (a) if:
   (1) The individual was forced to leave work because of illness or
       injury upon the advice of a licensed and practicing health care provider
       and, upon learning of the necessity for absence, immediately notified the
       employer thereof, or the employer consented to the absence, and after
       recovery from the illness or injury, when recovery was certified by a
       practicing health care provider, the individual returned to the employer
       and offered to perform services and the individual's regular work or
       comparable and suitable work was not available; as used in this paragraph
       (1) "health care provider" means any person licensed by the proper
       licensing authority of any state to engage in the practice of medicine and
       surgery, osteopathy, chiropractic, dentistry, optometry, podiatry or
       psychology;
       (2) the individual left temporary work to return to the regular
           employer;
       (3) the individual left work to enlist in the armed forces of the
United States, but was rejected or delayed from entry;

(4) the individual left work because of the voluntary or involuntary transfer of the individual's spouse from one job to another job, which is for the same employer or for a different employer, at a geographic location which makes it unreasonable for the individual to continue work at the individual's job;

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

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

(7) the individual left work because of unwelcome harassment of the individual by the employer or another employee of which the employing unit had knowledge;

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

(9) the individual left work as a result of being instructed or...
requested by the employer, a supervisor or a fellow employee to perform
a service or commit an act in the scope of official job duties which is in
violation of an ordinance or statute;
(10) the individual left work because of a violation of the work
agreement by the employing unit and, before the individual left, the
individual had exhausted all remedies provided in such agreement for the
settlement of disputes before terminating;
(11) after making reasonable efforts to preserve the work, the
individual left work due to a personal emergency of such nature and
compelling urgency that it would be contrary to good conscience to
impose a disqualification; or
(12) (A) the individual left work due to circumstances resulting from
domestic violence, including:
(i) The individual's reasonable fear of future domestic violence at or
en route to or from the individual's place of employment; or
(ii) the individual's need to relocate to another geographic area in
order to avoid future domestic violence; or
(iii) the individual's need to address the physical, psychological and
legal impacts of domestic violence; or
(iv) the individual's need to leave employment as a condition of
receiving services or shelter from an agency which provides support
services or shelter to victims of domestic violence; or
(v) the individual's reasonable belief that termination of employment
is necessary to avoid other situations which may cause domestic violence
and to provide for the future safety of the individual or the individual's
family.
(B) An individual may prove the existence of domestic violence by
providing one of the following:
(i) A restraining order or other documentation of equitable relief by
a court of competent jurisdiction; or
(ii) a police record documenting the abuse; or
(iii) documentation that the abuser has been convicted of one or
more of the offenses enumerated in articles 34 and 35 of chapter 21 of the
Kansas Statutes Annotated, and amendments thereto, where the victim
was a family or household member; or
(iv) medical documentation of the abuse; or
(v) a statement provided by a counselor, social worker, health care
provider, clergy, shelter worker, legal advocate, domestic violence or
sexual assault advocate or other professional who has assisted the
individual in dealing with the effects of abuse on the individual or the
individual's family; or
(vi) a sworn statement from the individual attesting to the abuse.
(C) No evidence of domestic violence experienced by an individual,
including the individual's statement and corroborating evidence, shall be
disclosed by the department of labor unless consent for disclosure is
given by the individual.

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

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

(2) For the purposes of this subsection (b), the use of or impairment
caused by alcoholic liquor, a cereal malt beverage or a nonprescribed
controlled substance by an individual while working shall be conclusive
evidence of misconduct and the possession of alcoholic liquor, a cereal
malt beverage or a nonprescribed controlled substance by an individual
while working shall be prima facie evidence of conduct which is a
violation of a duty or obligation reasonably owed to the employer as a
condition of employment. Alcoholic liquor shall be defined as provided in
K.S.A. 41-102, and amendments thereto. Cereal malt beverage shall be
defined as provided in K.S.A. 41-2701, and amendments thereto. Controlled substance shall be defined as provided in K.S.A. 2010 Supp.
21-36a01, and amendments thereto. As used in this subsection (b)(2),
"required by law" means required by a federal or state law, a federal or
state rule or regulation having the force and effect of law, a county
resolution or municipal ordinance, or a policy relating to public safety
adopted in open meeting by the governing body of any special district or
other local governmental entity. Chemical test shall include, but is not
limited to, tests of urine, blood or saliva. A positive chemical test shall
mean a chemical result showing a concentration at or above the levels listed in K.S.A. 44-501, and amendments thereto, for the drugs or abuse listed therein. A positive breath test shall mean a test result showing an alcohol concentration of .04 or greater. Alcohol concentration means the number of grams of alcohol per 210 liters of breath. An individual's refusal to submit to a chemical test or breath alcohol test shall be conclusive evidence of misconduct if the test meets the standards of the drug free workplace act, 41 U.S.C. §701 et seq.; the test was administered as part of an employee assistance program or other drug or alcohol treatment program in which the employee was participating voluntarily or as a condition of further employment; the test was otherwise required by law and the test constituted a required condition of employment for the individual's job; the test was requested pursuant to a written policy of the employer of which the employee had knowledge and was a required condition of employment; or there was probable cause to believe that the individual used, possessed or was impaired by alcoholic liquor, a cereal malt beverage or a controlled substance while working. A positive breath alcohol test or a positive chemical test shall be conclusive evidence to prove misconduct if the following conditions are met:

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

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

(C) the collecting and labeling of a chemical test sample was performed by a licensed health care professional or any other individual
certified pursuant to paragraph (b)(2)(F) or authorized to collect or label
test samples by federal or state law, or a federal or state rule or regulation
having the force or effect of law, including law enforcement personnel;
(D) the chemical test was performed by a laboratory approved by the
United States department of health and human services or licensed by the
department of health and environment, except that a blood sample may be
tested for alcohol content by a laboratory commonly used for that purpose
by state law enforcement agencies;
(E) the chemical test was confirmed by gas chromatography, gas
chromatography-mass spectroscopy or other comparably reliable
analytical method, except that no such confirmation is required for a
blood alcohol sample or a breath alcohol test;
(F) the breath alcohol test was administered by an individual trained
to perform breath tests, the breath testing instrument used was certified
and operated strictly according to description provided by the
manufacturers and the reliability of the instrument performance was
assured by testing with alcohol standards; and
(G) the foundation evidence must establish, beyond a reasonable
doubt, that the test results were from the sample taken from the
individual.
(3) (A) For the purposes of this subsection (b), misconduct shall
include, but not be limited to, repeated absence, including incarceration,
resulting in absence from work of three days or longer, excluding
Saturdays, Sundays and legal holidays, and lateness, from scheduled
work if the facts show:
(i) The individual was absent without good cause;
(ii) the absence was in violation of the employer's written
absenteeism policy;
(iii) the employer gave or sent written notice to the individual, at the
individual's last known address, that future absence may or will result in
discharge; and
(iv) the employee had knowledge of the employer's written
absenteeism policy.
(B) For the purposes of this subsection (b), if an employee disputes
being absent without good cause, the employee shall present evidence
that a majority of the employee's absences were for good cause. If the
employee alleges that the employee's repeated absences were the result of
health related issues, such evidence shall include documentation from a
licensed and practicing health care provider as defined in subsection (a)
(1).
(4) An individual shall not be disqualified under this subsection if
the individual is discharged under the following circumstances:
(A) The employer discharged the individual after learning the
individual was seeking other work or when the individual gave notice of future intent to quit;
(B) the individual was making a good-faith effort to do the assigned work but was discharged due to: (i) Inefficiency, (ii) unsatisfactory performance due to inability, incapacity or lack of training or experience, (iii) isolated instances of ordinary negligence or inadvertence, (iv) good-faith errors in judgment or discretion, or (v) unsatisfactory work or conduct due to circumstances beyond the individual's control; or
(C) the individual's refusal to perform work in excess of the contract of hire.
(c) If the individual has failed, without good cause, to either apply for suitable work when so directed by the employment office of the secretary of labor, or to accept suitable work when offered to the individual by the employment office, the secretary of labor, or an employer, such disqualification shall begin with the week in which such failure occurred and shall continue until the individual becomes reemployed and has had earnings from insured work of at least three times such individual's determined weekly benefit amount. In determining whether or not any work is suitable for an individual, the secretary of labor, or a person or persons designated by the secretary, shall consider the degree of risk involved to health, safety and morals, physical fitness and prior training, experience and prior earnings, length of unemployment and prospects for securing local work in the individual's customary occupation or work for which the individual is reasonably fitted by training or experience, and the distance of the available work from the individual's residence. Notwithstanding any other provisions of this act, an otherwise eligible individual shall not be disqualified for refusing an offer of suitable employment, or failing to apply for suitable employment when notified by an employment office, or for leaving the individual's most recent work accepted during approved training, including training approved under section 236(a)(1) of the trade act of 1974, if the acceptance of or applying for suitable employment or continuing such work would require the individual to terminate approved training and no work shall be deemed suitable and benefits shall not be denied under this act to any otherwise eligible individual for refusing to accept new work under any of the following conditions: (1) If the position offered is vacant due directly to a strike, lockout or other labor dispute; (2) if the remuneration, hours or other conditions of the work offered are substantially less favorable to the individual than those prevailing for similar work in the locality; (3) if as a condition of being employed, the individual would be required to join or to resign from or refrain from joining any labor organization; (4) if the individual left employment as a result of domestic violence, and the position offered
does not reasonably accommodate the individual's physical,
psychological, safety, and/or legal needs relating to such domestic
violence.

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

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

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

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

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

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

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

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

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

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

(n) For any week in which an individual is receiving a governmental
or other pension, retirement or retired pay, annuity or other similar
periodic payment under a plan maintained by a base period employer and
to which the entire contributions were provided by such employer, except
that: (1) If the entire contributions to such plan were provided by the base
period employer but such individual's weekly benefit amount exceeds
such governmental or other pension, retirement or retired pay, annuity or
other similar periodic payment attributable to such week, the weekly
benefit amount payable to the individual shall be reduced (but not below
zero) by an amount equal to the amount of such pension, retirement or
retired pay, annuity or other similar periodic payment which is
attributable to such week; or (2) if only a portion of contributions to such
plan were provided by the base period employer, the weekly benefit
amount payable to such individual for such week shall be reduced (but
not below zero) by the prorated weekly amount of the pension, retirement
or retired pay, annuity or other similar periodic payment after deduction
of that portion of the pension, retirement or retired pay, annuity or other
similar periodic payment that is directly attributable to the percentage of
the contributions made to the plan by such individual; or (3) if the entire
contributions to the plan were provided by such individual, or by the
individual and an employer (or any person or organization) who is not a
base period employer, no reduction in the weekly benefit amount payable
to the individual for such week shall be made under this subsection (n); or

(4) whatever portion of contributions to such plan were provided by the base period employer, if the services performed for the employer by such individual during the base period, or remuneration received for the services, did not affect the individual's eligibility for, or increased the amount of, such pension, retirement or retired pay, annuity or other similar periodic payment, no reduction in the weekly benefit amount payable to the individual for such week shall be made under this subsection (n). No reduction shall be made for payments made under the social security act or railroad retirement act of 1974.

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

(p) For any week of unemployment on the basis of service as a school bus or other motor vehicle driver employed by a private contractor directly by a school district to transport pupils, students and school personnel to or from school-related functions or activities for an educational institution, as defined in subsection (v) of K.S.A. 44-703, and amendments thereto, if such week begins during the period between two successive academic years or during a similar period between two regular terms, whether or not successive, if the individual has a contract or contracts, or a reasonable assurance thereof, to perform services in any such capacity with a private contractor for any educational institution for both such academic years or both such terms. An individual shall not be disqualified for benefits as provided in this subsection (p) for any week of unemployment on the basis of service as a bus or other motor vehicle driver employed by a private contractor to transport persons to or from:

(A) School-related functions or activities for an educational institution, as defined in subsection (v) of K.S.A. 44-703, and amendments thereto; and
(B) nonschool-related functions or activities.

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

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

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

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

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

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

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

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

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

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

Sec. 2. K.S.A. 2010 Supp. 44-706 is hereby repealed.

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