SENATE BILL No. 137

By Committee on Utilities

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
currently employed by the same employer at the factory, establishment
or 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) (s) 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) (t) 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.