

**SENATE BILL No. 410**

By Senators Schmidt, Adkins, Brownlee, Donovan, Jordan, Kerr, Schordorf, Teichman, Umbarger and Vratil

2-2

11 AN ACT concerning the employment security laws; relating to failure to  
12 pass a pre-employment drug screen and misconduct; amending K.S.A.  
13 2003 Supp. 44-706 and repealing the existing section.

14

15 *Be it enacted by the Legislature of the State of Kansas:*

16 Section 1. K.S.A. 2003 Supp. 44-706 is hereby amended to read as  
17 follows: 44-706. An individual shall be disqualified for benefits:

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

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

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

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

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

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

22 (6) the individual left work to enter training approved under section  
23 236(a)(1) of the federal trade act of 1974, provided the work left is not  
24 of a substantially equal or higher skill level than the individual's past  
25 adversely affected employment (as defined for purposes of the federal  
26 trade act of 1974), and wages for such work are not less than 80% of the  
27 individual's average weekly wage as determined for the purposes of the  
28 federal trade act of 1974;

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

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

41 (9) the individual left work as a result of being instructed or requested  
42 by the employer, a supervisor or a fellow employee to perform a service  
43 or commit an act in the scope of official job duties which is in violation

- 1 of an ordinance or statute;
- 2 (10) the individual left work because of a violation of the work agree-  
3 ment by the employing unit and, before the individual left, the individual  
4 had exhausted all remedies provided in such agreement for the settlement  
5 of disputes before terminating;
- 6 (11) after making reasonable efforts to preserve the work, the indi-  
7 vidual left work due to a personal emergency of such nature and com-  
8 pelling urgency that it would be contrary to good conscience to impose a  
9 disqualification; or
- 10 (12) the individual left work due to circumstances resulting from do-  
11 mestic violence, including:
- 12 (A) The individual's reasonable fear of future domestic violence at or  
13 en route to or from the individual's place of employment; or
- 14 (B) the individual's need to relocate to another geographic area in  
15 order to avoid future domestic violence; or
- 16 (C) the individual's need to address the physical, psychological and  
17 legal impacts of domestic violence; or
- 18 (D) the individual's need to leave employment as a condition of re-  
19 ceiving services or shelter from an agency which provides support services  
20 or shelter to victims of domestic violence; or
- 21 (E) the individual's reasonable belief that termination of employment  
22 is necessary to avoid other situations which may cause domestic violence  
23 and to provide for the future safety of the individual or the individual's  
24 family.
- 25 (b) An individual may prove the existence of domestic violence by  
26 providing one of the following:
- 27 (1) A restraining order or other documentation of equitable relief by  
28 a court of competent jurisdiction; or
- 29 (2) a police record documenting the abuse; or
- 30 (3) documentation that the abuser has been convicted of one or more  
31 of the offenses enumerated in articles 34 and 35 of chapter 21 of the  
32 Kansas Statutes Annotated, and amendments thereto, where the victim  
33 was a family or household member; or
- 34 (4) medical documentation of the abuse; or
- 35 (5) a statement provided by a counselor, social worker, health care  
36 provider, clergy, shelter worker, legal advocate, domestic violence or sex-  
37 ual assault advocate or other professional who has assisted the individual  
38 in dealing with the effects of abuse on the individual or the individual's  
39 family; or
- 40 (6) a sworn statement from the individual attesting to the abuse.
- 41 (c) No evidence of domestic violence experienced by an individual,  
42 including the individual's statement and corroborating evidence, shall be  
43 disclosed by the department of human resources unless consent for dis-

1 closure is given by the individual.

2 (d) If the individual has been discharged for misconduct connected  
3 with the individual's work. The disqualification shall begin the day follow-  
4 ing the separation and shall continue until after the individual becomes  
5 reemployed and has had earnings from insured work of at least three  
6 times the individual's determined weekly benefit amount, except that if  
7 an individual is discharged for gross misconduct connected with the in-  
8 dividual's work, such individual shall be disqualified for benefits until such  
9 individual again becomes employed and has had earnings from insured  
10 work of at least eight times such individual's determined weekly benefit  
11 amount. In addition, all wage credits attributable to the employment from  
12 which the individual was discharged for gross misconduct connected with  
13 the individual's work shall be canceled. No such cancellation of wage  
14 credits shall affect prior payments made as a result of a prior separation.  
15 ~~(1) For the purposes of this subsection (d), "misconduct" is defined as a~~  
16 ~~violation of a duty or obligation reasonably owed the employer as a con-~~  
17 ~~dition of employment; and the term "gross misconduct" as used in this~~  
18 ~~subsection (d) shall be construed to mean is defined as~~ conduct evincing  
19 extreme, willful or wanton misconduct ~~as defined by this subsection (d).~~

20 ~~(2) For the purposes of this subsection (d), the use of or impairment~~  
21 ~~caused by an alcoholic beverage, a cereal malt beverage or a nonprescri-~~  
22 ~~bed controlled substance by an individual while working shall be conclu-~~  
23 ~~sive evidence of misconduct and the possession of an alcoholic beverage,~~  
24 ~~a cereal malt beverage or a nonprescribed controlled substance by an~~  
25 ~~individual while working shall be prima facie evidence of conduct which~~  
26 ~~is a violation of a duty or obligation reasonably owed to the employer as~~  
27 ~~a condition of employment. For purposes of this subsection (d), the dis-~~  
28 ~~qualification of an individual from employment which disqualification is~~  
29 ~~required by the provisions of the drug free workplace act, 41 U.S.C. 701~~  
30 ~~et seq. or is otherwise required by law because the individual refused to~~  
31 ~~submit to or failed a chemical test which was required by law, shall be~~  
32 ~~conclusive evidence of misconduct. Refusal to submit to a chemical test~~  
33 ~~administered pursuant to an employee assistance program or other drug~~  
34 ~~or alcohol treatment program in which the individual was participating~~  
35 ~~voluntarily or as a condition of further employment shall also be conclu-~~  
36 ~~sive evidence of misconduct. Alcoholic liquor shall be defined as provided~~  
37 ~~in K.S.A. 41-102 and amendments thereto. Cereal malt beverage shall be~~  
38 ~~defined as provided in K.S.A. 41-2701 and amendments thereto. Con-~~  
39 ~~trolled substance shall be defined as provided in K.S.A. 65-4101 and~~  
40 ~~amendments thereto of the uniform controlled substances act. As used~~  
41 ~~in this subsection (d)(2), "required by law" means required by a federal~~  
42 ~~or state law, a federal or state rule or regulation having the force and~~  
43 ~~effect of law, a county resolution or municipal ordinance, or a policy~~

1 relating to public safety adopted in open meeting by the governing body  
2 of any special district or other local governmental entity. An individual's  
3 refusal to submit to a chemical test shall not be admissible evidence to  
4 prove misconduct unless the test is required by and meets the standards  
5 of the drug free workplace act, 41 U.S.C. 701 et seq., the test was ad-  
6 ministered as part of an employee assistance program or other drug or  
7 alcohol treatment program in which the employee was participating vol-  
8 untarily or as a condition of further employment, the test was otherwise  
9 required by law and the test constituted a required condition of employ-  
10 ment for the individual's job, or, there was probable cause to believe that  
11 the individual used, possessed or was impaired by an alcoholic beverage,  
12 a cereal malt beverage or a controlled substance while working.

13 (1) (A) As used in this subsection (d): (i) "Alcohol" shall be defined as:  
14 (a) Alcoholic liquor as provided in K.S.A. 41-102, and amendments  
15 thereto; or (b) cereal malt beverage as provided in K.S.A. 41-2701, and  
16 amendments thereto.

17 (ii) "Controlled substances" shall be defined as provided in K.S.A. 65-  
18 4101, and amendments thereto of the uniform controlled substances act.

19 (iii) "Allowed by law" is defined as allowed by a federal or state law,  
20 a federal or state rule or regulation having the force and effect of law, a  
21 county resolution or municipal ordinance, or a policy relating to public  
22 safety adopted in an open meeting by the governing body of any special  
23 district or other local governmental entity.

24 (B) For the purpose of this subsection (d), the following shall be con-  
25 clusive evidence of misconduct:

26 (i) The individual refuses to submit to or fails any chemical test that  
27 is allowed by law;

28 (ii) the individual is impaired by a controlled substance or alcohol  
29 while at the work place;

30 (iii) the individual uses a controlled substance or alcohol at the work-  
31 place; **or**

32 (iv) the individual possesses a controlled substance or alcohol at the  
33 workplace; ~~or.~~

34 ~~(v) the individual fails a pre-employment drug screen required by the~~  
35 ~~employer and the employer has agreed to employ the person before drug~~  
36 ~~screen results are known to the employer.~~

37 (C) The results of a chemical test shall not be admissible evidence to  
38 prove misconduct unless the following conditions were met:

39 (A) ~~Either (i) the test was required by law, the test was administered~~  
40 ~~pursuant to the drug free workplace act, 41 U.S.C. 701 et seq., (ii) the~~  
41 ~~test was administered as part of an employee assistance program or other~~  
42 ~~drug or alcohol treatment program in which the employee was partici-~~  
43 ~~partating voluntarily or as a condition of further employment, (iii) the test~~

1 ~~was required by law and the test constituted a required condition of em-~~  
2 ~~ployment for the individual's job, or (iv) there was probable cause to~~  
3 ~~believe that the individual used, had possession of, or was impaired by~~  
4 ~~the alcoholic beverage, the cereal malt beverage or the controlled sub-~~  
5 ~~stance while working;~~  
6 ~~—(B) (i) The test sample was collected either (i) (a) as prescribed by~~  
7 ~~the drug free workplace act, 41 U.S.C. 701 et seq., (ii) (b) as prescribed~~  
8 ~~by an employee assistance program or other drug or alcohol treatment~~  
9 ~~program in which the employee was participating voluntarily or as a con-~~  
10 ~~dition of further employment, (iii) (c) as prescribed by a test which was~~  
11 ~~required by law and which constituted a required condition of employ-~~  
12 ~~ment for the individual's job, or (iv) (d) at a time contemporaneous with~~  
13 ~~the events establishing probable cause;~~  
14 ~~(C) (ii) the collecting and labeling of the test sample was performed~~  
15 ~~by a licensed health care professional or any other individual authorized~~  
16 ~~to collect or label test samples by federal or state law, or a federal or state~~  
17 ~~rule or regulation having the force and effect of law, including law en-~~  
18 ~~forcement personnel;~~  
19 ~~(D) (iii) the test was performed by a laboratory approved by the~~  
20 ~~United States department of health and human services or licensed by~~  
21 ~~the department of health and environment, except that a blood sample~~  
22 ~~may be tested for alcohol content by a laboratory commonly used for that~~  
23 ~~purpose by state law enforcement agencies;~~  
24 ~~(E) (iv) the test was confirmed by gas chromatography, gas chroma-~~  
25 ~~tography-mass spectroscopy or other comparably reliable analytical~~  
26 ~~method, except that no such confirmation is required for a blood alcohol~~  
27 ~~sample; and~~  
28 ~~(F) (v) the foundation evidence must establish, beyond a reasonable~~  
29 ~~doubt, that the test results were from the sample taken from the~~  
30 ~~individual.~~  
31 ~~(3) (2) For the purposes of this subsection (d), misconduct shall in-~~  
32 ~~clude, but not be limited to repeated absence, including lateness, from~~  
33 ~~scheduled work if the facts show:~~  
34 ~~(A) The individual was absent without good cause;~~  
35 ~~(B) the absence was in violation of the employer's written absentee-~~  
36 ~~ism policy;~~  
37 ~~(C) the employer gave or sent written notice to the individual, at the~~  
38 ~~individual's last known address, that future absence may or will result in~~  
39 ~~discharge;~~  
40 ~~(D) the employee had knowledge of the employer's written absen-~~  
41 ~~teeism policy; and~~  
42 ~~(E) if an employee disputes being absent without good cause, the~~  
43 ~~employee shall present evidence that a majority of the employee's ab-~~

1 sences were for good cause.

2 ~~(4)~~ (3) An individual shall not be disqualified under this subsection  
3 (d) if the individual is discharged under the following circumstances:

4 (A) The employer discharged the individual after learning the indi-  
5 vidual was seeking other work or when the individual gave notice of future  
6 intent to quit;

7 (B) the individual was making a good-faith effort to do the assigned  
8 work but was discharged due to: (i) Inefficiency, (ii) unsatisfactory per-  
9 formance due to inability, incapacity or lack of training or experience, (iii)  
10 isolated instances of ordinary negligence or inadvertence, (iv) good-faith  
11 errors in judgment or discretion, or (v) unsatisfactory work or conduct  
12 due to circumstances beyond the individual's control; or

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

15 (e) If the individual has failed, without good cause, to either apply  
16 for suitable work when so directed by the employment office of the sec-  
17 retary of human resources, or to accept suitable work when offered to  
18 the individual by the employment office, the secretary of human re-  
19 sources, or an employer, such disqualification shall begin with the week  
20 in which such failure occurred and shall continue until the individual  
21 becomes reemployed and has had earnings from insured work of at least  
22 three times such individual's determined weekly benefit amount. In de-  
23 termining whether or not any work is suitable for an individual, the sec-  
24 retary of human resources, or a person or persons designated by the  
25 secretary, shall consider the degree of risk involved to health, safety and  
26 morals, physical fitness and prior training, experience and prior earnings,  
27 length of unemployment and prospects for securing local work in the  
28 individual's customary occupation or work for which the individual is rea-  
29 sonably fitted by training or experience, and the distance of the available  
30 work from the individual's residence. Notwithstanding any other provi-  
31 sions of this act, an otherwise eligible individual shall not be disqualified  
32 for refusing an offer of suitable employment, or failing to apply for suit-  
33 able employment when notified by an employment office, or for leaving  
34 the individual's most recent work accepted during approved training, in-  
35 cluding training approved under section 236(a)(1) of the trade act of 1974,  
36 if the acceptance of or applying for suitable employment or continuing  
37 such work would require the individual to terminate approved training  
38 and no work shall be deemed suitable and benefits shall not be denied  
39 under this act to any otherwise eligible individual for refusing to accept  
40 new work under any of the following conditions: (1) If the position offered  
41 is vacant due directly to a strike, lockout or other labor dispute; (2) if the  
42 remuneration, hours or other conditions of the work offered are substan-  
43 tially less favorable to the individual than those prevailing for similar work

1 in the locality; (3) if as a condition of being employed, the individual would  
2 be required to join or to resign from or refrain from joining any labor  
3 organization; (4) if the individual left employment as a result of domestic  
4 violence, and the position offered does not reasonably accommodate the  
5 individual's physical, psychological, safety, and/or legal needs relating to  
6 said domestic violence.

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

32 (g) For any week with respect to which or a part of which the indi-  
33 vidual has received or is seeking unemployment benefits under the un-  
34 employment compensation law of any other state or of the United States,  
35 except that if the appropriate agency of such other state or the United  
36 States finally determines that the individual is not entitled to such un-  
37 employment benefits, this disqualification shall not apply.

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

43 (i) For the period of one year beginning with the first day following



1 the last week of unemployment for which the individual received benefits,  
2 or for one year from the date the act was committed, whichever is the  
3 later, if the individual, or another in such individual's behalf with the  
4 knowledge of the individual, has knowingly made a false statement or  
5 representation, or has knowingly failed to disclose a material fact to obtain  
6 or increase benefits under this act or any other unemployment compen-  
7 sation law administered by the secretary of human resources.

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

12 (k) For any week of unemployment on the basis of service in an in-  
13 structional, research or principal administrative capacity for an educa-  
14 tional institution as defined in subsection (v) of K.S.A. 44-703 and amend-  
15 ments thereto, if such week begins during the period between two  
16 successive academic years or terms or, when an agreement provides in-  
17 stead for a similar period between two regular but not successive terms  
18 during such period or during a period of paid sabbatical leave provided  
19 for in the individual's contract, if the individual performs such services in  
20 the first of such academic years or terms and there is a contract or a  
21 reasonable assurance that such individual will perform services in any  
22 such capacity for any educational institution in the second of such aca-  
23 demic years or terms.

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

38 (m) For any week of unemployment on the basis of service in any  
39 capacity for an educational institution as defined in subsection (v) of  
40 K.S.A. 44-703 and amendments thereto, if such week begins during an  
41 established and customary vacation period or holiday recess, if the indi-  
42 vidual performs services in the period immediately before such vacation  
43 period or holiday recess and there is a reasonable assurance that such

1 individual will perform such services in the period immediately following  
2 such vacation period or holiday recess.

3 (n) For any week of unemployment on the basis of any services, sub-  
4 stantially all of which consist of participating in sports or athletic events  
5 or training or preparing to so participate, if such week begins during the  
6 period between two successive sport seasons or similar period if such  
7 individual performed services in the first of such seasons or similar per-  
8 iods and there is a reasonable assurance that such individual will perform  
9 such services in the later of such seasons or similar periods.

10 (o) For any week on the basis of services performed by an alien unless  
11 such alien is an individual who was lawfully admitted for permanent res-  
12 idence at the time such services were performed, was lawfully present  
13 for purposes of performing such services, or was permanently residing in  
14 the United States under color of law at the time such services were per-  
15 formed, including an alien who was lawfully present in the United States  
16 as a result of the application of the provisions of section 212(d)(5) of the  
17 federal immigration and nationality act. Any data or information required  
18 of individuals applying for benefits to determine whether benefits are not  
19 payable to them because of their alien status shall be uniformly required  
20 from all applicants for benefits. In the case of an individual whose appli-  
21 cation for benefits would otherwise be approved, no determination that  
22 benefits to such individual are not payable because of such individual's  
23 alien status shall be made except upon a preponderance of the evidence.

24 (p) For any week in which an individual is receiving a governmental  
25 or other pension, retirement or retired pay, annuity or other similar pe-  
26 riodic payment under a plan maintained by a base period employer and  
27 to which the entire contributions were provided by such employer, except  
28 that: (1) If the entire contributions to such plan were provided by the  
29 base period employer but such individual's weekly benefit amount ex-  
30 ceeds such governmental or other pension, retirement or retired pay,  
31 annuity or other similar periodic payment attributable to such week, the  
32 weekly benefit amount payable to the individual shall be reduced (but  
33 not below zero) by an amount equal to the amount of such pension,  
34 retirement or retired pay, annuity or other similar periodic payment  
35 which is attributable to such week; or (2) if only a portion of contributions  
36 to such plan were provided by the base period employer, the weekly  
37 benefit amount payable to such individual for such week shall be reduced  
38 (but not below zero) by the prorated weekly amount of the pension, re-  
39 tirement or retired pay, annuity or other similar periodic payment after  
40 deduction of that portion of the pension, retirement or retired pay, an-  
41 nuity or other similar periodic payment that is directly attributable to the  
42 percentage of the contributions made to the plan by such individual; or  
43 (3) if the entire contributions to the plan were provided by such individ-

1 ual, or by the individual and an employer (or any person or organization)  
2 who is not a base period employer, no reduction in the weekly benefit  
3 amount payable to the individual for such week shall be made under this  
4 subsection (p); or (4) whatever portion of contributions to such plan were  
5 provided by the base period employer, if the services performed for the  
6 employer by such individual during the base period, or remuneration  
7 received for the services, did not affect the individual's eligibility for, or  
8 increased the amount of, such pension, retirement or retired pay, annuity  
9 or other similar periodic payment, no reduction in the weekly benefit  
10 amount payable to the individual for such week shall be made under this  
11 subsection (p). No reduction shall be made for payments made under the  
12 social security act or railroad retirement act of 1974.

13 (q) For any week of unemployment on the basis of services per-  
14 formed in any capacity and under any of the circumstances described in  
15 subsection (k), (l) or (m) which an individual performed in an educational  
16 institution while in the employ of an educational service agency. For the  
17 purposes of this subsection (q), the term "educational service agency"  
18 means a governmental agency or entity which is established and operated  
19 exclusively for the purpose of providing such services to one or more  
20 educational institutions.

21 (r) For any week of unemployment on the basis of service as a school  
22 bus or other motor vehicle driver employed by a private contractor to  
23 transport pupils, students and school personnel to or from school-related  
24 functions or activities for an educational institution, as defined in subsec-  
25 tion (v) of K.S.A. 44-703 and amendments thereto, if such week begins  
26 during the period between two successive academic years or during a  
27 similar period between two regular terms, whether or not successive, if  
28 the individual has a contract or contracts, or a reasonable assurance  
29 thereof, to perform services in any such capacity with a private contractor  
30 for any educational institution for both such academic years or both such  
31 terms. An individual shall not be disqualified for benefits as provided in  
32 this subsection (r) for any week of unemployment on the basis of service  
33 as a bus or other motor vehicle driver employed by a private contractor  
34 to transport persons to or from nonschool-related functions or activities.

35 (s) For any week of unemployment on the basis of services performed  
36 by the individual in any capacity and under any of the circumstances  
37 described in subsection (k), (l), (m) or (q) which are provided to or on  
38 behalf of an educational institution, as defined in subsection (v) of K.S.A.  
39 44-703 and amendments thereto, while the individual is in the employ of  
40 an employer which is a governmental entity, Indian tribe or any employer  
41 described in section 501(c)(3) of the federal internal revenue code of 1986  
42 which is exempt from income under section 501(a) of the code.

43 (t) For any week in which an individual is registered at and attending

1 an established school, training facility or other educational institution, or  
2 is on vacation during or between two successive academic years or terms.  
3 An individual shall not be disqualified for benefits as provided in this  
4 subsection (t) provided:

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

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

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

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

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

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

29 ***(v) If the individual has been discharged for failing a pre-em-***  
30 ***ployment drug screen required by the employer and if such dis-***  
31 ***charge occurs not later than seven days after the employer is noti-***  
32 ***fied of the results of such drug screen.***

33 Sec. 2. K.S.A. 2003 Supp. 44-706 is hereby repealed.

34 Sec. 3. This act shall take effect and be in force from and after its  
35 publication in the Kansas register.