

**SENATE BILL No. 408**

By Senators Hensley, Faust-Goudeau, Francisco, Haley, Holland, Kultala and A.  
Schmidt

2-8

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1 AN ACT concerning the employment security law; pertaining to the  
2 waiting week; pertaining to benefits; amending K.S.A. 2011 Supp. 44-  
3 705 and 44-706 and repealing the existing sections; also repealing  
4 K.S.A. 2011 Supp. 44-706b.  
5

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

7 Section 1. K.S.A. 2011 Supp. 44-705 is hereby amended to read as  
8 follows: 44-705. Except as provided by K.S.A. 44-757, and amendments  
9 thereto, an unemployed individual shall be eligible to receive benefits with  
10 respect to any week only if the secretary, or a person or persons designated  
11 by the secretary, finds that:

12 (a) The claimant has registered for work at and thereafter continued  
13 to report at an employment office in accordance with rules and regulations  
14 adopted by the secretary, except that, subject to the provisions of  
15 subsection (a) of K.S.A. 44-704, and amendments thereto, the secretary  
16 may adopt rules and regulations which waive or alter either or both of the  
17 requirements of this subsection (a).

18 (b) The claimant has made a claim for benefits with respect to such  
19 week in accordance with rules and regulations adopted by the secretary.

20 (c) The claimant is able to perform the duties of such claimant's  
21 customary occupation or the duties of other occupations for which the  
22 claimant is reasonably fitted by training or experience, and is available for  
23 work, as demonstrated by the claimant's pursuit of the full course of action  
24 most reasonably calculated to result in the claimant's reemployment except  
25 that, notwithstanding any other provisions of this section, an unemployed  
26 claimant otherwise eligible for benefits shall not become ineligible for  
27 benefits: (1) Because of the claimant's enrollment in and satisfactory  
28 pursuit of approved training, including training approved under section  
29 236(a)(1) of the trade act of 1974; or (2) solely because such individual is  
30 seeking only part-time employment if the individual is available for a  
31 number of hours per week that are comparable to the individual's part-time  
32 work experience in the base period.

33 For the purposes of this subsection, an inmate of a custodial or  
34 correctional institution shall be deemed to be unavailable for work and not  
35 eligible to receive unemployment compensation while incarcerated.

1 (d) (1) Except as provided further, the claimant has been unemployed  
2 for a waiting period of one week or the claimant is unemployed and has  
3 satisfied the requirement for a waiting period of one week under the shared  
4 work unemployment compensation program as provided in subsection (k)  
5 (4) of K.S.A. 44-757, and amendments thereto, which period of one week,  
6 in either case, occurs within the benefit year which includes the week for  
7 which the claimant is claiming benefits. No week shall be counted as a  
8 week of unemployment for the purposes of this subsection (d):

9 (A) If benefits have been paid for such week;

10 (B) if the individual fails to meet with the other eligibility  
11 requirements of this section; or

12 (C) if an individual is seeking unemployment benefits under the  
13 unemployment compensation law of any other state or of the United  
14 States, except that if the appropriate agency of such state or of the United  
15 States finally determines that the claimant is not entitled to unemployment  
16 benefits under such other law, this subsection (d)(1)(C) shall not apply.

17 (2) The waiting week requirement of paragraph (1) shall not apply to  
18 new claims, filed on or after July 1, 2007, by claimants who become  
19 unemployed as a result of an employer terminating business operations  
20 within this state, declaring bankruptcy or initiating a work force reduction  
21 pursuant to public law 100-379, the federal worker adjustment and  
22 retraining notification act (29 U.S.C. §§ 2101 through 2109), as amended.  
23 The secretary shall adopt rules and regulations to administer the provisions  
24 of this paragraph.

25 (3) *A claimant shall become eligible to receive compensation for the*  
26 *waiting period of one week, pursuant to paragraph (1), upon completion*  
27 *of three weeks of unemployment consecutive to such waiting period.*

28 (e) For benefit years established on and after the effective date of this  
29 act, the claimant has been paid total wages for insured work in the  
30 claimant's base period of not less than 30 times the claimant's weekly  
31 benefit amount and has been paid wages in more than one quarter of the  
32 claimant's base period, except that the wage credits of an individual earned  
33 during the period commencing with the end of a prior base period and  
34 ending on the date on which such individual filed a valid initial claim shall  
35 not be available for benefit purposes in a subsequent benefit year unless, in  
36 addition thereto, such individual has returned to work and subsequently  
37 earned wages for insured work in an amount equal to at least eight times  
38 the claimant's current weekly benefit amount.

39 (f) The claimant participates in reemployment services, such as job  
40 search assistance services, if the individual has been determined to be  
41 likely to exhaust regular benefits and needs reemployment services  
42 pursuant to a profiling system established by the secretary, unless the  
43 secretary determines that: (1) The individual has completed such services;

1 or (2) there is justifiable cause for the claimant's failure to participate in  
2 such services.

3 (g) The claimant is returning to work after a qualifying injury and has  
4 been paid total wages for insured work in the claimant's alternative base  
5 period of not less than 30 times the claimant's weekly benefit amount and  
6 has been paid wages in more than one quarter of the claimant's alternative  
7 base period if:

8 (1) The claimant has filed for benefits within four weeks of being  
9 released to return to work by a licensed and practicing health care  
10 provider.

11 (2) The claimant files for benefits within 24 months of the date the  
12 qualifying injury occurred.

13 (3) The claimant attempted to return to work with the employer  
14 where the qualifying injury occurred, but the individual's regular work or  
15 comparable and suitable work was not available.

16 Sec. 2. K.S.A. 2011 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  
19 attributable to the work or the employer, subject to the other provisions of  
20 this subsection. Failure to return to work after expiration of approved  
21 personal or medical leave, or both, shall be considered a voluntary  
22 resignation. After a temporary job assignment, failure of an individual to  
23 affirmatively request an additional assignment on the next succeeding  
24 workday, if required by the employment agreement, after completion of a  
25 given work assignment, shall constitute leaving work voluntarily. The  
26 disqualification shall begin the day following the separation and shall  
27 continue until after the individual has become reemployed and has had  
28 earnings from insured work of at least three times the individual's weekly  
29 benefit amount. An individual shall not be disqualified under this  
30 subsection if:

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

42 (2) the individual left temporary work to return to the regular  
43 employer;

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

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

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

27 (6) the individual left work to enter training approved under section  
28 236(a)(1) of the federal trade act of 1974, provided the work left is not of a  
29 substantially equal or higher skill level than the individual's past adversely  
30 affected employment-~~), as defined for purposes of the federal trade act of~~  
31 ~~1974), and wages for such work are not less than 80% of the individual's~~  
32 ~~average weekly wage as determined for the purposes of the federal trade~~  
33 ~~act of 1974;~~

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

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

1 comparison to the distance from the individual's residence to the work left;  
2 (9) the individual left work as a result of being instructed or requested  
3 by the employer, a supervisor or a fellow employee to perform a service or  
4 commit an act in the scope of official job duties which is in violation of an  
5 ordinance or statute;

6 (10) the individual left work because of a violation of the work  
7 agreement by the employing unit and, before the individual left, the  
8 individual had exhausted all remedies provided in such agreement for the  
9 settlement of disputes before terminating;

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

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

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

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

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

22 (iv) the individual's need to leave employment as a condition of  
23 receiving services or shelter from an agency which provides support  
24 services or shelter to victims of domestic violence; or

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

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

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

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

34 (iii) documentation that the abuser has been convicted of one or more  
35 of the offenses enumerated in ~~article~~ *articles 34 and 35 of chapter 21 of*  
36 *the Kansas Statutes Annotated, prior to their repeal, or articles 54 or 55 of*  
37 *chapter 21 of the Kansas Statutes Annotated, or K.S.A. 2011 Supp. 21-*  
38 *6104, 21-6325, 21-6326 or 21-6418 through ~~2-6421~~ 21-6421, and*  
39 *amendments thereto, where the victim was a family or household member;*  
40 or

41 (iv) medical documentation of the abuse; or

42 (v) a statement provided by a counselor, social worker, health care  
43 provider, clergy, shelter worker, legal advocate, domestic violence or

1 sexual assault advocate or other professional who has assisted the  
2 individual in dealing with the effects of abuse on the individual or the  
3 individual's family; or

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

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

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

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

31 (2) For the purposes of this subsection, the use of or impairment  
32 caused by alcoholic liquor, a cereal malt beverage or a nonprescribed  
33 controlled substance by an individual while working shall be conclusive  
34 evidence of misconduct and the possession of alcoholic liquor, a cereal  
35 malt beverage or a nonprescribed controlled substance by an individual  
36 while working shall be *prima facie* evidence of conduct which is a  
37 violation of a duty or obligation reasonably owed to the employer as a  
38 condition of employment. Alcoholic liquor shall be defined as provided in  
39 K.S.A. 41-102, and amendments thereto. Cereal malt beverage shall be  
40 defined as provided in K.S.A. 41-2701, and amendments thereto.  
41 Controlled substance shall be defined as provided in K.S.A. 2011 Supp.  
42 21-5701, and amendments thereto. As used in this paragraph, "required by  
43 law" means required by a federal or state law, a federal or state rule or

1 regulation having the force and effect of law, a county resolution or  
2 municipal ordinance, or a policy relating to public safety adopted in open  
3 meeting by the governing body of any special district or other local  
4 governmental entity. Chemical test shall include, but is not limited to, tests  
5 of urine, blood or saliva. A positive chemical test shall mean a chemical  
6 result showing a concentration at or above the levels listed in K.S.A. 44-  
7 501, and amendments thereto, for the drugs or abuse listed therein. A  
8 positive breath test shall mean a test result showing an alcohol  
9 concentration of .04 or greater. Alcohol concentration means the number  
10 of grams of alcohol per 210 liters of breath. An individual's refusal to  
11 submit to a chemical test or breath alcohol test shall be conclusive  
12 evidence of misconduct if the test meets the standards of the drug free  
13 workplace act, 41 U.S.C. § 701 *et seq.*; the test was administered as part of  
14 an employee assistance program or other drug or alcohol treatment  
15 program in which the employee was participating voluntarily or as a  
16 condition of further employment; the test was otherwise required by law  
17 and the test constituted a required condition of employment for the  
18 individual's job; the test was requested pursuant to a written policy of the  
19 employer of which the employee had knowledge and was a required  
20 condition of employment; or there was probable cause to believe that the  
21 individual used, possessed or was impaired by alcoholic liquor, a cereal  
22 malt beverage or a controlled substance while working. A positive breath  
23 alcohol test or a positive chemical test shall be conclusive evidence to  
24 prove misconduct if the following conditions are met:

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

37 (B) the test sample was collected either (i) as prescribed by the drug  
38 free workplace act, 41 U.S.C. § 701 *et seq.*, (ii) as prescribed by an  
39 employee assistance program or other drug or alcohol treatment program  
40 in which the employee was participating voluntarily or as a condition of  
41 further employment, (iii) as prescribed by the written policy of the  
42 employer of which the employee had knowledge and which constituted a  
43 required condition of employment, (iv) as prescribed by a test which was

1 required by law and which constituted a required condition of employment  
2 for the individual's job, or (v) at a time contemporaneous with the events  
3 establishing probable cause;

4 (C) the collecting and labeling of a chemical test sample was  
5 performed by a licensed health care professional or any other individual  
6 certified pursuant to paragraph (b)(2)(F) or authorized to collect or label  
7 test samples by federal or state law, or a federal or state rule or regulation  
8 having the force or effect of law, including law enforcement personnel;

9 (D) the chemical test was performed by a laboratory approved by the  
10 United States department of health and human services or licensed by the  
11 department of health and environment, except that a blood sample may be  
12 tested for alcohol content by a laboratory commonly used for that purpose  
13 by state law enforcement agencies;

14 (E) the chemical test was confirmed by gas chromatography, gas  
15 chromatography-mass spectroscopy or other comparably reliable  
16 analytical method, except that no such confirmation is required for a blood  
17 alcohol sample or a breath alcohol test;

18 (F) the breath alcohol test was administered by an individual trained  
19 to perform breath tests, the breath testing instrument used was certified  
20 and operated strictly according to description provided by the  
21 manufacturers and the reliability of the instrument performance was  
22 assured by testing with alcohol standards; and

23 (G) the foundation evidence must establish, beyond a reasonable  
24 doubt, that the test results were from the sample taken from the individual.

25 (3) (A) For the purposes of this subsection, misconduct shall include,  
26 but not be limited to, repeated absence, including incarceration, resulting  
27 in absence from work of three days or longer, excluding Saturdays,  
28 Sundays and legal holidays, and lateness, from scheduled work if the facts  
29 show:

30 (i) The individual was absent without good cause;

31 (ii) the absence was in violation of the employer's written  
32 absenteeism policy;

33 (iii) the employer gave or sent written notice to the individual, at the  
34 individual's last known address, that future absence may or will result in  
35 discharge; and

36 (iv) the employee had knowledge of the employer's written  
37 absenteeism policy.

38 (B) For the purposes of this subsection, if an employee disputes being  
39 absent without good cause, the employee shall present evidence that a  
40 majority of the employee's absences were for good cause. If the employee  
41 alleges that the employee's repeated absences were the result of health  
42 related issues, such evidence shall include documentation from a licensed  
43 and practicing health care provider as defined in subsection (a)(1).



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

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

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

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

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

1 resign from or refrain from joining any labor organization; *and* (4) if the  
2 individual left employment as a result of domestic violence, and the  
3 position offered does not reasonably accommodate the individual's  
4 physical, psychological, safety, and/or legal needs relating to such  
5 domestic violence.

6 (d) For any week with respect to which the secretary of labor, or a  
7 person or persons designated by the secretary, finds that the individual's  
8 unemployment is due to a stoppage of work which exists because of a  
9 labor dispute or there would have been a work stoppage had normal  
10 operations not been maintained with other personnel previously and  
11 currently employed by the same employer at the factory, establishment or  
12 other premises at which the individual is or was last employed, except that  
13 this subsection (d) shall not apply if it is shown to the satisfaction of the  
14 secretary of labor, or a person or persons designated by the secretary, that:

15 (1) The individual is not participating in or financing or directly interested  
16 in the labor dispute which caused the stoppage of work; and (2) the  
17 individual does not belong to a grade or class of workers of which,  
18 immediately before the commencement of the stoppage, there were  
19 members employed at the premises at which the stoppage occurs any of  
20 whom are participating in or financing or directly interested in the dispute.  
21 If in any case separate branches of work which are commonly conducted  
22 as separate businesses in separate premises are conducted in separate  
23 departments of the same premises, each such department shall, for the  
24 purpose of this subsection be deemed to be a separate factory,  
25 establishment or other premises. For the purposes of this subsection,  
26 failure or refusal to cross a picket line or refusal for any reason during the  
27 continuance of such labor dispute to accept the individual's available and  
28 customary work at the factory, establishment or other premises where the  
29 individual is or was last employed shall be considered as participation and  
30 interest in the labor dispute.

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

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

42 (g) For the period of one year beginning with the first day following  
43 the last week of unemployment for which the individual received benefits,

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

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

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

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

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

1 following such vacation period or holiday recess.

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

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

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

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

13 (o) For any week of unemployment on the basis of services  
14 performed in any capacity and under any of the circumstances described in  
15 subsection (i), (j) or (k) 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, the term "educational service agency" means a  
18 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 (p) 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  
25 subsection (v) of K.S.A. 44-703, and amendments thereto, if such week  
26 begins during the period between two successive academic years or during  
27 a 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 for any week of unemployment on the basis of service as a  
33 bus or other motor vehicle driver employed by a private contractor to  
34 transport persons to or from nonschool-related functions or activities.

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

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

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

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

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

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

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

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

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

37 (u) If the individual was found not to have a disqualifying  
38 adjudication or conviction under K.S.A. 39-970, and amendments thereto,  
39 or K.S.A. 65-5117, and amendments thereto, was hired and then was  
40 subsequently convicted of a disqualifying felony under K.S.A. 39-970, and  
41 amendments thereto, or K.S.A. 65-5117, and amendments thereto, and  
42 discharged pursuant to K.S.A. 39-970, and amendments thereto, or K.S.A.  
43 65-5117, and amendments thereto. The disqualification shall begin the day

1 following the separation and shall continue until after the individual  
2 becomes reemployed and has had earnings from insured work of at least  
3 three times the individual's determined weekly benefit amount.

4 Sec. 3. K.S.A. 2011 Supp. 44-705, 44-706 and 44-706b are hereby  
5 repealed.

6 Sec. 4. This act shall take effect and be in force from and after its  
7 publication in the statute book.