

{As Amended by House Committee of the Whole}

As Amended by House Committee

{As Amended by Senate Committee of the Whole}

Session of 2013

SENATE BILL No. 149

By Committee on Commerce

2-6

1 AN ACT concerning drug screening; ~~relating to recipients of cash~~
2 ~~assistance and unemployment benefits~~; amending K.S.A. 2012 Supp.
3 ~~{39-709,}~~ 39-709e ~~and,~~ 44-706 ~~{and 75-4362}~~ and repealing the
4 existing sections.
5

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

7 Section 1. K.S.A. 2012 Supp. 39-709 is hereby amended to read as
8 follows: 39-709. (a) *General eligibility requirements for assistance for*
9 *which federal moneys are expended.* Subject to the additional requirements
10 below, assistance in accordance with plans under which federal moneys
11 are expended may be granted to any needy person who:

12 (1) Has insufficient income or resources to provide a reasonable
13 subsistence compatible with decency and health. Where a husband and
14 wife are living together, the combined income or resources of both shall be
15 considered in determining the eligibility of either or both for such
16 assistance unless otherwise prohibited by law. The secretary, in
17 determining need of any applicant for or recipient of assistance shall not
18 take into account the financial responsibility of any individual for any
19 applicant or recipient of assistance unless such applicant or recipient is
20 such individual's spouse or such individual's minor child or minor
21 stepchild if the stepchild is living with such individual. The secretary in
22 determining need of an individual may provide such income and resource
23 exemptions as may be permitted by federal law. For purposes of eligibility
24 for aid for families with dependent children, for food stamp assistance and
25 for any other assistance provided through the department of social and
26 rehabilitation services under which federal moneys are expended, the
27 secretary of social and rehabilitation services shall consider one motor
28 vehicle owned by the applicant for assistance, regardless of the value of
29 such vehicle, as exempt personal property and shall consider any equity in
30 any additional motor vehicle owned by the applicant for assistance to be a
31 nonexempt resource of the applicant for assistance.

32 (2) Is a citizen of the United States or is an alien lawfully admitted to

1 the United States and who is residing in the state of Kansas.

2 (b) *Assistance to families with dependent children.* Assistance may be
3 granted under this act to any dependent child, or relative, subject to the
4 general eligibility requirements as set out in subsection (a), who resides in
5 the state of Kansas or whose parent or other relative with whom the child
6 is living resides in the state of Kansas. Such assistance shall be known as
7 aid to families with dependent children. Where husband and wife are
8 living together both shall register for work under the program
9 requirements for aid to families with dependent children in accordance
10 with criteria and guidelines prescribed by rules and regulations of the
11 secretary.

12 (c) *Aid to families with dependent children; assignment of support*
13 *rights and limited power of attorney.* By applying for or receiving aid to
14 families with dependent children such applicant or recipient shall be
15 deemed to have assigned to the secretary on behalf of the state any
16 accrued, present or future rights to support from any other person such
17 applicant may have in such person's own behalf or in behalf of any other
18 family member for whom the applicant is applying for or receiving aid. In
19 any case in which an order for child support has been established and the
20 legal custodian and obligee under the order surrenders physical custody of
21 the child to a caretaker relative without obtaining a modification of legal
22 custody and support rights on behalf of the child are assigned pursuant to
23 this section, the surrender of physical custody and the assignment shall
24 transfer, by operation of law, the child's support rights under the order to
25 the secretary on behalf of the state. Such assignment shall be of all
26 accrued, present or future rights to support of the child surrendered to the
27 caretaker relative. The assignment of support rights shall automatically
28 become effective upon the date of approval for or receipt of such aid
29 without the requirement that any document be signed by the applicant,
30 recipient or obligee. By applying for or receiving aid to families with
31 dependent children, or by surrendering physical custody of a child to a
32 caretaker relative who is an applicant or recipient of such assistance on the
33 child's behalf, the applicant, recipient or obligee is also deemed to have
34 appointed the secretary, or the secretary's designee, as an attorney in fact to
35 perform the specific act of negotiating and endorsing all drafts, checks,
36 money orders or other negotiable instruments representing support
37 payments received by the secretary in behalf of any person applying for,
38 receiving or having received such assistance. This limited power of
39 attorney shall be effective from the date the secretary approves the
40 application for aid and shall remain in effect until the assignment of
41 support rights has been terminated in full.

42 (d) *Eligibility requirements for general assistance, the cost of which*
43 *is not shared by the federal government.* (1) General assistance may be

1 granted to eligible persons who do not qualify for financial assistance in a
2 program in which the federal government participates and who satisfy the
3 additional requirements prescribed by or under this subsection (d).

4 (A) To qualify for general assistance in any form a needy person must
5 have insufficient income or resources to provide a reasonable subsistence
6 compatible with decency and health and, except as provided for
7 transitional assistance, be a member of a family in which a minor child or
8 a pregnant woman resides or be unable to engage in employment. The
9 secretary shall adopt rules and regulations prescribing criteria for
10 establishing when a minor child may be considered to be living with a
11 family and whether a person is able to engage in employment, including
12 such factors as age or physical or mental condition. Eligibility for general
13 assistance, other than transitional assistance, is limited to families in which
14 a minor child or a pregnant woman resides or to an adult or family in
15 which all legally responsible family members are unable to engage in
16 employment. Where a husband and wife are living together the combined
17 income or resources of both shall be considered in determining the
18 eligibility of either or both for such assistance unless otherwise prohibited
19 by law. The secretary in determining need of any applicant for or recipient
20 of general assistance shall not take into account the financial responsibility
21 of any individual for any applicant or recipient of general assistance unless
22 such applicant or recipient is such individual's spouse or such individual's
23 minor child or a minor stepchild if the stepchild is living with such
24 individual. In determining the need of an individual, the secretary may
25 provide for income and resource exemptions.

26 (B) To qualify for general assistance in any form a needy person must
27 be a citizen of the United States or an alien lawfully admitted to the United
28 States and must be residing in the state of Kansas.

29 (2) General assistance in the form of transitional assistance may be
30 granted to eligible persons who do not qualify for financial assistance in a
31 program in which the federal government participates and who satisfy the
32 additional requirements prescribed by or under this subsection (d), but who
33 do not meet the criteria prescribed by rules and regulations of the secretary
34 relating to inability to engage in employment or are not a member of a
35 family in which a minor or a pregnant woman resides.

36 (3) In addition to the other requirements prescribed under this
37 subsection (d), the secretary shall adopt rules and regulations which
38 establish community work experience program requirements for eligibility
39 for the receipt of general assistance in any form and which establish
40 penalties to be imposed when a work assignment under a community work
41 experience program requirement is not completed without good cause. The
42 secretary may adopt rules and regulations establishing exemptions from
43 any such community work experience program requirements. A first time

1 failure to complete such a work assignment requirement shall result in
2 ineligibility to receive general assistance for a period fixed by such rules
3 and regulations of not more than three calendar months. A subsequent
4 failure to complete such a work assignment requirement shall result in a
5 period fixed by such rules and regulations of ineligibility of not more than
6 six calendar months.

7 (4) If any person is found guilty of the crime of theft under the
8 provisions of K.S.A. 39-720, and amendments thereto, such person shall
9 thereby become forever ineligible to receive any form of general
10 assistance under the provisions of this subsection (d) unless the conviction
11 is the person's first conviction under the provisions of K.S.A. 39-720, and
12 amendments thereto, or the law of any other state concerning welfare
13 fraud. First time offenders convicted of a misdemeanor under the
14 provisions of such statute shall become ineligible to receive any form of
15 general assistance for a period of 12 calendar months from the date of
16 conviction. First time offenders convicted of a felony under the provisions
17 of such statute shall become ineligible to receive any form of general
18 assistance for a period of 60 calendar months from the date of conviction.
19 If any person is found guilty by a court of competent jurisdiction of any
20 state other than the state of Kansas of a crime involving welfare fraud,
21 such person shall thereby become forever ineligible to receive any form of
22 general assistance under the provisions of this subsection (d) unless the
23 conviction is the person's first conviction under the law of any other state
24 concerning welfare fraud. First time offenders convicted of a misdemeanor
25 under the law of any other state concerning welfare fraud shall become
26 ineligible to receive any form of general assistance for a period of 12
27 calendar months from the date of conviction. First time offenders
28 convicted of a felony under the law of any other state concerning welfare
29 fraud shall become ineligible to receive any form of general assistance for
30 a period of 60 calendar months from the date of conviction.

31 (e) *Requirements for medical assistance for which federal moneys or*
32 *state moneys or both are expended.* (1) When the secretary has adopted a
33 medical care plan under which federal moneys or state moneys or both are
34 expended, medical assistance in accordance with such plan shall be
35 granted to any person who is a citizen of the United States or who is an
36 alien lawfully admitted to the United States and who is residing in the state
37 of Kansas, whose resources and income do not exceed the levels
38 prescribed by the secretary. In determining the need of an individual, the
39 secretary may provide for income and resource exemptions and protected
40 income and resource levels. Resources from inheritance shall be counted.
41 A disclaimer of an inheritance pursuant to K.S.A. 59-2291, and
42 amendments thereto, shall constitute a transfer of resources. The secretary
43 shall exempt principal and interest held in irrevocable trust pursuant to

1 subsection (c) of K.S.A. 16-303, and amendments thereto, from the
2 eligibility requirements of applicants for and recipients of medical
3 assistance. Such assistance shall be known as medical assistance.

4 (2) For the purposes of medical assistance eligibility determinations
5 on or after July 1, 2004, if an applicant or recipient owns property in joint
6 tenancy with some other party and the applicant or recipient of medical
7 assistance has restricted or conditioned their interest in such property to a
8 specific and discrete property interest less than 100%, then such
9 designation will cause the full value of the property to be considered an
10 available resource to the applicant or recipient.

11 (3) (A) Resources from trusts shall be considered when determining
12 eligibility of a trust beneficiary for medical assistance. Medical assistance
13 is to be secondary to all resources, including trusts, that may be available
14 to an applicant or recipient of medical assistance.

15 (B) If a trust has discretionary language, the trust shall be considered
16 to be an available resource to the extent, using the full extent of discretion,
17 the trustee may make any of the income or principal available to the
18 applicant or recipient of medical assistance. Any such discretionary trust
19 shall be considered an available resource unless: (i) At the time of creation
20 or amendment of the trust, the trust states a clear intent that the trust is
21 supplemental to public assistance; and (ii) the trust: (a) Is funded from
22 resources of a person who, at the time of such funding, owed no duty of
23 support to the applicant or recipient of medical assistance; or (b) is funded
24 not more than nominally from resources of a person while that person
25 owed a duty of support to the applicant or recipient of medical assistance.

26 (C) For the purposes of this paragraph, "public assistance" includes,
27 but is not limited to, medicaid, medical assistance or title XIX of the social
28 security act.

29 (4) (A) When an applicant or recipient of medical assistance is a party
30 to a contract, agreement or accord for personal services being provided by
31 a nonlicensed individual or provider and such contract, agreement or
32 accord involves health and welfare monitoring, pharmacy assistance, case
33 management, communication with medical, health or other professionals,
34 or other activities related to home health care, long term care, medical
35 assistance benefits, or other related issues, any moneys paid under such
36 contract, agreement or accord shall be considered to be an available
37 resource unless the following restrictions are met: (i) The contract,
38 agreement or accord must be in writing and executed prior to any services
39 being provided; (ii) the moneys paid are in direct relationship with the fair
40 market value of such services being provided by similarly situated and
41 trained nonlicensed individuals; (iii) if no similarly situated nonlicensed
42 individuals or situations can be found, the value of services will be based
43 on federal hourly minimum wage standards; (iv) such individual providing

1 the services will report all receipts of moneys as income to the appropriate
2 state and federal governmental revenue agencies; (v) any amounts due
3 under such contract, agreement or accord shall be paid after the services
4 are rendered; (vi) the applicant or recipient shall have the power to revoke
5 the contract, agreement or accord; and (vii) upon the death of the applicant
6 or recipient, the contract, agreement or accord ceases.

7 (B) When an applicant or recipient of medical assistance is a party to
8 a written contract for personal services being provided by a licensed health
9 professional or facility and such contract involves health and welfare
10 monitoring, pharmacy assistance, case management, communication with
11 medical, health or other professionals, or other activities related to home
12 health care, long term care, medical assistance benefits or other related
13 issues, any moneys paid in advance of receipt of services for such
14 contracts shall be considered to be an available resource.

15 (5) Any trust may be amended if such amendment is permitted by the
16 Kansas uniform trust code.

17 (f) *Eligibility for medical assistance of resident receiving medical*
18 *care outside state.* A person who is receiving medical care including long-
19 term care outside of Kansas whose health would be endangered by the
20 postponement of medical care until return to the state or by travel to return
21 to Kansas, may be determined eligible for medical assistance if such
22 individual is a resident of Kansas and all other eligibility factors are met.
23 Persons who are receiving medical care on an ongoing basis in a long-term
24 medical care facility in a state other than Kansas and who do not return to
25 a care facility in Kansas when they are able to do so, shall no longer be
26 eligible to receive assistance in Kansas unless such medical care is not
27 available in a comparable facility or program providing such medical care
28 in Kansas. For persons who are minors or who are under guardianship, the
29 actions of the parent or guardian shall be deemed to be the actions of the
30 child or ward in determining whether or not the person is remaining
31 outside the state voluntarily.

32 (g) *Medical assistance; assignment of rights to medical support and*
33 *limited power of attorney; recovery from estates of deceased recipients.*(1)
34 Except as otherwise provided in K.S.A. 39-786 and 39-787, and
35 amendments thereto, or as otherwise authorized on and after September
36 30, 1989, under section 303 and amendments thereto of the federal
37 medicare catastrophic coverage act of 1988, whichever is applicable, by
38 applying for or receiving medical assistance under a medical care plan in
39 which federal funds are expended, any accrued, present or future rights to
40 support and any rights to payment for medical care from a third party of an
41 applicant or recipient and any other family member for whom the
42 applicant is applying shall be deemed to have been assigned to the
43 secretary on behalf of the state. The assignment shall automatically

1 become effective upon the date of approval for such assistance without the
2 requirement that any document be signed by the applicant or recipient. By
3 applying for or receiving medical assistance the applicant or recipient is
4 also deemed to have appointed the secretary, or the secretary's designee, as
5 an attorney in fact to perform the specific act of negotiating and endorsing
6 all drafts, checks, money orders or other negotiable instruments,
7 representing payments received by the secretary in behalf of any person
8 applying for, receiving or having received such assistance. This limited
9 power of attorney shall be effective from the date the secretary approves
10 the application for assistance and shall remain in effect until the
11 assignment has been terminated in full. The assignment of any rights to
12 payment for medical care from a third party under this subsection shall not
13 prohibit a health care provider from directly billing an insurance carrier for
14 services rendered if the provider has not submitted a claim covering such
15 services to the secretary for payment. Support amounts collected on behalf
16 of persons whose rights to support are assigned to the secretary only under
17 this subsection and no other shall be distributed pursuant to subsection (d)
18 of K.S.A. 39-756, and amendments thereto, except that any amounts
19 designated as medical support shall be retained by the secretary for
20 repayment of the unreimbursed portion of assistance. Amounts collected
21 pursuant to the assignment of rights to payment for medical care from a
22 third party shall also be retained by the secretary for repayment of the
23 unreimbursed portion of assistance.

24 (2) The amount of any medical assistance paid after June 30, 1992,
25 under the provisions of subsection (e) is (A) a claim against the property or
26 any interest therein belonging to and a part of the estate of any deceased
27 recipient or, if there is no estate, the estate of the surviving spouse, if any,
28 shall be charged for such medical assistance paid to either or both, and (B)
29 a claim against any funds of such recipient or spouse in any account under
30 K.S.A. 9-1215, 9-1216, 17-2263, 17-2264, 17-5828 or 17-5829, and
31 amendments thereto. There shall be no recovery of medical assistance
32 correctly paid to or on behalf of an individual under subsection (e) except
33 after the death of the surviving spouse of the individual, if any, and only at
34 a time when the individual has no surviving child who is under 21 years of
35 age or is blind or permanently and totally disabled. Transfers of real or
36 personal property by recipients of medical assistance without adequate
37 consideration are voidable and may be set aside. Except where there is a
38 surviving spouse, or a surviving child who is under 21 years of age or is
39 blind or permanently and totally disabled, the amount of any medical
40 assistance paid under subsection (e) is a claim against the estate in any
41 guardianship or conservatorship proceeding. The monetary value of any
42 benefits received by the recipient of such medical assistance under long-
43 term care insurance, as defined by K.S.A. 40-2227, and amendments

1 thereto, shall be a credit against the amount of the claim provided for such
2 medical assistance under this subsection (g). The secretary is authorized to
3 enforce each claim provided for under this subsection (g). The secretary
4 shall not be required to pursue every claim, but is granted discretion to
5 determine which claims to pursue. All moneys received by the secretary
6 from claims under this subsection (g) shall be deposited in the social
7 welfare fund. The secretary may adopt rules and regulations for the
8 implementation and administration of the medical assistance recovery
9 program under this subsection (g).

10 (3) By applying for or receiving medical assistance under the
11 provisions of article 7 of chapter 39 of the Kansas Statutes Annotated, such
12 individual or such individual's agent, fiduciary, guardian, conservator,
13 representative payee or other person acting on behalf of the individual
14 consents to the following definitions of estate and the results therefrom:

15 (A) If an individual receives any medical assistance before July 1,
16 2004, pursuant to article 7 of chapter 39 of the Kansas Statutes Annotated,
17 which forms the basis for a claim under subsection (g)(2), such claim is
18 limited to the individual's probatable estate as defined by applicable law;
19 and

20 (B) if an individual receives any medical assistance on or after July 1,
21 2004, pursuant to article 7 of chapter 39 of the Kansas Statutes Annotated,
22 which forms the basis for a claim under subsection (g)(2), such claim shall
23 apply to the individual's medical assistance estate. The medical assistance
24 estate is defined as including all real and personal property and other
25 assets in which the deceased individual had any legal title or interest
26 immediately before or at the time of death to the extent of that interest or
27 title. The medical assistance estate includes, without limitation assets
28 conveyed to a survivor, heir or assign of the deceased recipient through
29 joint tenancy, tenancy in common, survivorship, transfer-on-death deed,
30 payable-on-death contract, life estate, trust, annuities or similar
31 arrangement.

32 (4) The secretary of social and rehabilitation services or the
33 secretary's designee is authorized to file and enforce a lien against the real
34 property of a recipient of medical assistance in certain situations, subject
35 to all prior liens of record. The lien must be filed in the office of the
36 register of deeds of the county where the real property is located and must
37 contain the legal description of all real property in the county subject to the
38 lien. This lien is for payments of medical assistance made by the
39 department of social and rehabilitation services to the recipient who is an
40 inpatient in a nursing home or other medical institution. Such lien may be
41 filed only after notice and an opportunity for a hearing has been given.
42 Such lien may be enforced only upon competent medical testimony that
43 the recipient cannot reasonably be expected to be discharged and returned

1 home. A six-month period of compensated inpatient care at a nursing
2 home, nursing homes or other medical institution shall constitute a
3 determination by the department of social and rehabilitation services that
4 the recipient cannot reasonably be expected to be discharged and returned
5 home. To return home means the recipient leaves the nursing or medical
6 facility and resides in the home on which the lien has been placed for a
7 period of at least 90 days without being readmitted as an inpatient to a
8 nursing or medical facility. The amount of the lien shall be for the amount
9 of assistance paid by the department of social and rehabilitation services
10 after the expiration of six months from the date the recipient became
11 eligible for compensated inpatient care at a nursing home, nursing homes
12 or other medical institution until the time of the filing of the lien and for
13 any amount paid thereafter for such medical assistance to the recipient.

14 (5) The lien filed by the secretary or the secretary's designee for
15 medical assistance correctly received may be enforced before or after the
16 death of the recipient by the filing of an action to foreclose such lien in the
17 Kansas district court or through an estate probate court action in the
18 county where the real property of the recipient is located. However, it may
19 be enforced only:

20 (A) After the death of the surviving spouse of the recipient;

21 (B) when there is no child of the recipient, natural or adopted, who is
22 20 years of age or less residing in the home;

23 (C) when there is no adult child of the recipient, natural or adopted,
24 who is blind or disabled residing in the home; or

25 (D) when no brother or sister of the recipient is lawfully residing in
26 the home, who has resided there for at least one year immediately before
27 the date of the recipient's admission to the nursing or medical facility, and
28 has resided there on a continuous basis since that time.

29 (6) The lien remains on the property even after a transfer of the title
30 by conveyance, sale, succession, inheritance or will unless one of the
31 following events occur:

32 (A) The lien is satisfied. The recipient, the heirs, personal
33 representative or assigns of the recipient may discharge such lien at any
34 time by paying the amount of the lien to the secretary or the secretary's
35 designee;

36 (B) the lien is terminated by foreclosure of prior lien of record or
37 settlement action taken in lieu of foreclosure;

38 (C) the value of the real property is consumed by the lien, at which
39 time the secretary or the secretary's designee may force the sale for the real
40 property to satisfy the lien; or

41 (D) after a lien is filed against the real property, it will be dissolved if
42 the recipient leaves the nursing or medical facility and resides in the
43 property to which the lien is attached for a period of more than 90 days

1 without being readmitted as an inpatient to a nursing or medical facility,
2 even though there may have been no reasonable expectation that this
3 would occur. If the recipient is readmitted to a nursing or medical facility
4 during this period, and does return home after being released, another 90
5 days must be completed before the lien can be dissolved.

6 (7) If the secretary of social and rehabilitation services or the
7 secretary's designee has not filed an action to foreclose the lien in the
8 Kansas district court in the county where the real property is located
9 within 10 years from the date of the filing of the lien, then the lien shall
10 become dormant, and shall cease to operate as a lien on the real estate of
11 the recipient. Such dormant lien may be revived in the same manner as a
12 dormant judgment lien is revived under K.S.A. 60-2403 et seq., and
13 amendments thereto.

14 (h) *Placement under the revised Kansas code for care of children or*
15 *revised Kansas juvenile justice code; assignment of support rights and*
16 *limited power of attorney.* In any case in which the secretary of social and
17 rehabilitation services pays for the expenses of care and custody of a child
18 pursuant to K.S.A. 2012 Supp. 38-2201 et seq. or 38-2301 et seq., and
19 amendments thereto, including the expenses of any foster care placement,
20 an assignment of all past, present and future support rights of the child in
21 custody possessed by either parent or other person entitled to receive
22 support payments for the child is, by operation of law, conveyed to the
23 secretary. Such assignment shall become effective upon placement of a
24 child in the custody of the secretary or upon payment of the expenses of
25 care and custody of a child by the secretary without the requirement that
26 any document be signed by the parent or other person entitled to receive
27 support payments for the child. When the secretary pays for the expenses
28 of care and custody of a child or a child is placed in the custody of the
29 secretary, the parent or other person entitled to receive support payments
30 for the child is also deemed to have appointed the secretary, or the
31 secretary's designee, as attorney in fact to perform the specific act of
32 negotiating and endorsing all drafts, checks, money orders or other
33 negotiable instruments representing support payments received by the
34 secretary on behalf of the child. This limited power of attorney shall be
35 effective from the date the assignment to support rights becomes effective
36 and shall remain in effect until the assignment of support rights has been
37 terminated in full.

38 (i) No person who voluntarily quits employment or who is fired from
39 employment due to gross misconduct as defined by rules and regulations
40 of the secretary or who is a fugitive from justice by reason of a felony
41 conviction or charge shall be eligible to receive public assistance benefits
42 in this state. Any recipient of public assistance who fails to timely comply
43 with monthly reporting requirements under criteria and guidelines

1 prescribed by rules and regulations of the secretary shall be subject to a
2 penalty established by the secretary by rules and regulations.

3 (j) If the applicant or recipient of aid to families with dependent
4 children is a mother of the dependent child, as a condition of the mother's
5 eligibility for aid to families with dependent children the mother shall
6 identify by name and, if known, by current address the father of the
7 dependent child except that the secretary may adopt by rules and
8 regulations exceptions to this requirement in cases of undue hardship. Any
9 recipient of aid to families with dependent children who fails to cooperate
10 with requirements relating to child support enforcement under criteria and
11 guidelines prescribed by rules and regulations of the secretary shall be
12 subject to a penalty established by the secretary by rules and regulations
13 which penalty shall progress to ineligibility for the family after three
14 months of noncooperation.

15 (k) By applying for or receiving child care benefits or food stamps,
16 the applicant or recipient shall be deemed to have assigned, pursuant to
17 K.S.A. 39-756 and amendments thereto, to the secretary on behalf of the
18 state only accrued, present or future rights to support from any other
19 person such applicant may have in such person's own behalf or in behalf of
20 any other family member for whom the applicant is applying for or
21 receiving aid. The assignment of support rights shall automatically become
22 effective upon the date of approval for or receipt of such aid without the
23 requirement that any document be signed by the applicant or recipient. By
24 applying for or receiving child care benefits or food stamps, the applicant
25 or recipient is also deemed to have appointed the secretary, or the
26 secretary's designee, as an attorney in fact to perform the specific act of
27 negotiating and endorsing all drafts, checks, money orders or other
28 negotiable instruments representing support payments received by the
29 secretary in behalf of any person applying for, receiving or having
30 received such assistance. This limited power of attorney shall be effective
31 from the date the secretary approves the application for aid and shall
32 remain in effect until the assignment of support rights has been terminated
33 in full. An applicant or recipient who has assigned support rights to the
34 secretary pursuant to this subsection shall cooperate in establishing and
35 enforcing support obligations to the same extent required of applicants for
36 or recipients of aid to families with dependent children.

37 (l) (1) *A program of drug screening for applicants for cash assistance*
38 *as a condition of eligibility for cash assistance and persons receiving cash*
39 *assistance as a condition of continued receipt of cash assistance shall be*
40 *established, subject to applicable federal law, by the secretary for children*
41 *and families on or before January 1, 2014. Under such program of drug*
42 *screening, the secretary for children and families shall order a drug*
43 *screening of an applicant for or a recipient of cash assistance at any time*

1 when reasonable suspicion exists that such applicant for or recipient of
2 cash assistance is **{unlawfully}** using a controlled substance or controlled
3 substance analog. The secretary for children and families may use any
4 information obtained by the secretary for children and families to
5 determine whether such reasonable suspicion exists, including, but not
6 limited to, an applicant's or recipient's demeanor; missed appointments
7 and arrest or other police records, previous employment or application for
8 employment in an occupation or industry that regularly conducts drug
9 screening, termination from previous employment due to **{unlawful}** use of
10 a controlled substance or controlled substance analog or prior drug
11 screening records of the applicant or recipient indicating **{unlawful}** use
12 of a controlled substance or controlled substance analog.

13 (2) Any applicant for or recipient of cash assistance whose drug
14 screening results in a positive test may request that the drug screening
15 specimen be sent to a different drug testing facility for an additional drug
16 screening. Any applicant for or recipient of cash assistance who requests
17 an additional drug screening at a different drug testing facility shall be
18 required to pay the cost of drug screening. Such applicant or recipient who
19 took the additional drug screening and who tested negative for **{unlawful}**
20 use of a controlled substance and controlled substance analog shall be
21 reimbursed for the cost of such additional drug screening.

22 (3) Any applicant for or recipient of cash assistance who tests
23 positive for **{unlawful}** use of a controlled substance or controlled
24 substance analog shall be required to complete a substance abuse
25 treatment program approved by the secretary for children and families,
26 secretary of labor or secretary of commerce, and a job skills program
27 approved by the secretary for children and families, secretary of labor or
28 secretary of commerce. Subject to applicable federal laws, any applicant
29 for or recipient of cash assistance who fails to complete or refuses to
30 participate in the substance abuse treatment program or job skills
31 program as required under this subsection shall be ineligible to receive
32 cash assistance until completion of such substance abuse treatment and
33 job skills programs. Upon completion of both substance abuse treatment
34 and job skills programs, such applicant for or recipient of cash assistance
35 may be subject to periodic drug screening, as determined by the secretary
36 for children and families. Upon a second positive test for **{unlawful}** use
37 of a controlled substance or controlled substance analog, a recipient of
38 cash assistance shall be ordered to complete again a substance abuse
39 treatment program and job skills program, and shall be terminated from
40 cash assistance for a period of 12 months, or until such recipient of cash
41 assistance completes both substance abuse treatment and job skills
42 programs, whichever is later. Upon a third positive test for **{unlawful}** use
43 of a controlled substance or controlled substance analog, a recipient of

1 cash assistance shall be terminated from cash assistance, subject to
2 applicable federal law.

3 ~~*The secretary for children and families shall fund such substance*~~
4 ~~*abuse treatment program and job skills program with the funding*~~
5 ~~*available from TANF, provided that the federal law and regulations*~~
6 ~~*allow such expenditure and the applicant or the recipient are not*~~
7 ~~*otherwise eligible for medical assistance under subsection (e). If the*~~
8 ~~*federal law and regulations do not allow such expenditure, the secretary*~~
9 ~~*for children and families shall expend moneys appropriated from the*~~
10 ~~*state general fund to administer and operate such programs. When the*~~
11 ~~*federal or any other funding is not available to fund such expenditures,*~~
12 ~~*the secretary for children and families shall expend moneys from the*~~
13 ~~*state general fund to administer and operate such programs.*~~

14 (4) If an applicant for or recipient of cash assistance is ineligible for
15 or terminated from cash assistance as a result of a positive test for
16 **{unlawful}** use of a controlled substance or controlled substance analog,
17 and such applicant for or recipient of cash assistance is the parent or
18 legal guardian of a minor child—~~eligible for cash assistance~~, an
19 appropriate protective payee shall be designated to receive cash
20 assistance on behalf of such child. Such parent or legal guardian of the
21 minor child may choose to designate an individual to receive cash
22 assistance for such parent's or legal guardian's minor child, as approved
23 by the secretary for children and families. Prior to the designated
24 individual receiving any cash assistance, the secretary for children and
25 families shall ~~order a drug screening of the designated individual~~**{review**
26 **whether reasonable suspicion exists that such designated individual is**
27 **unlawfully using a controlled substance or controlled substance analog}**.

28 (A) In addition, any individual designated to receive cash assistance
29 on behalf of an eligible minor child shall be subject to drug screening at
30 any time when reasonable suspicion exists that such designated individual
31 is **{unlawfully}** using a controlled substance or controlled substance
32 analog. The secretary for children and families may use any information
33 obtained by the secretary for children and families to determine whether
34 such reasonable suspicion exists, including, but not limited to, the
35 designated individual's demeanor, missed appointments and arrest or
36 other police records, previous employment or application for employment
37 in an occupation or industry that regularly conducts drug screening,
38 termination from previous employment due to **{unlawful}** use of a
39 controlled substance or controlled substance analog or prior drug
40 screening records of the designated individual indicating **{unlawful}** use
41 of a controlled substance or controlled substance analog.

42 (B) Any designated individual whose drug screening results in a
43 positive test may request that the drug screening specimen be sent to a

1 different drug testing facility for an additional drug screening. Any
2 designated individual who requests an additional drug screening at a
3 different drug testing facility shall be required to pay the cost of drug
4 screening. Such designated individual who took the additional drug
5 screening and who tested negative for {unlawful} use of a controlled
6 substance and controlled substance analog shall be reimbursed for the
7 cost of such additional drug screening.

8 (C) Upon any positive test for {unlawful} use of a controlled
9 substance or controlled substance analog, the designated individual shall
10 not receive cash assistance on behalf of the parent's or legal guardian's
11 minor child, and another designated individual shall be selected by the
12 secretary for children and families to receive cash assistance on behalf of
13 such parent's or legal guardian's minor child.

14 (5) If a person has been convicted under federal or state law of any
15 offense which is classified as a felony by the law of the jurisdiction and
16 which has as an element of such offense the manufacture, cultivation,
17 distribution, possession or use of a controlled substance or controlled
18 substance analog, and the date of conviction is on or after July 1, 2013,
19 such person shall thereby become forever ineligible to receive any cash
20 assistance under this subsection unless such conviction is the person's first
21 conviction. First-time offenders convicted under federal or state law of
22 any offense which is classified as a felony by the law of the jurisdiction
23 and which has as an element of such offense the manufacture, cultivation,
24 distribution, possession or use of a controlled substance or controlled
25 substance analog, and the date of conviction is on or after July 1, 2013,
26 such person shall become ineligible to receive cash assistance for five
27 years from the date of conviction.

28 (6) Except for hearings before the Kansas department for children and
29 families or ~~criminal prosecutions~~, the results of any drug screening
30 administered as part of the drug screening program authorized by this
31 subsection shall be confidential and shall not be disclosed publicly.

32 (7) The secretary for children and families may adopt such rules and
33 regulations as are necessary to carry out the provisions of this subsection.

34 (8) Any authority granted to the secretary for children and families
35 under this subsection shall be in addition to any other penalties prescribed
36 by law.

37 (9) As used in this subsection:

38 (A) "Cash assistance" means cash assistance provided to individuals
39 under the provisions of article 7 of chapter 39 of the Kansas Statutes
40 Annotated, and amendments thereto, and any rules and regulations
41 adopted pursuant to such statutes.

42 (B) "Controlled substance" means the same as in K.S.A. 2012 Supp.
43 21-5701, and amendments thereto, and 21 U.S.C. § 802.

1 (C) "Controlled substance analog" means the same as in K.S.A. 2012
2 Supp. 21-5701, and amendments thereto.

3 Sec. 2. K.S.A. 2012 Supp. 39-709e is hereby amended to read as
4 follows: 39-709e. (a) *Except as provided in section 1, and amendments*
5 *thereto*, under the authority of subsection (d)(1)(A) of 21 U.S.C. § 862a,
6 the state of Kansas hereby exercises its option out of subsection (a) of 21
7 U.S.C. § 862a, which makes any individual ineligible for certain state and
8 federal assistance if that individual has been convicted under federal or
9 state law of any offense which is classified as a felony by the law of the
10 jurisdiction and which has as an element of such offense the possession,
11 use or distribution of a controlled substance as defined by subsection (6) of
12 21 U.S.C. § 802, only if, after such conviction, such individual has:

13 (1) Been assessed by a licensed substance abuse treatment provider as
14 not requiring substance abuse treatment; or

15 (2) been assessed by a licensed substance abuse treatment provider
16 and such provider recommended substance abuse treatment and such
17 individual:

18 (A) Is participating in a licensed substance abuse treatment program;
19 or

20 (B) has successfully completed a licensed substance abuse treatment
21 program.

22 (b) An individual shall be disqualified for any state or federal
23 assistance permitted by this section if confirmation of illegal drug use is
24 found as a result of testing that occurs while the individual is on probation,
25 parole, conditional release or postrelease supervision or during required
26 substance abuse treatment. Thereafter, such disqualified individual may
27 reapply for assistance after 30 days.

28 New Sec. 3. (a) Each employer shall submit a report to the secretary
29 containing:

30 (1) ~~The name and address of each employee who has been~~
31 ~~discharged by reason of misconduct as such term is defined in K.S.A. 44-~~
32 ~~706(b)(2), and amendments thereto; or~~

33 ~~(2)~~ the name and address of each job applicant who has **{been}**
34 refused employment by reason of misconduct as such term is defined in
35 K.S.A. 44-706(b)(2), and amendments thereto; and

36 ~~(3)~~ (2) such other information which may be required by the
37 secretary.

38 (b) The report required by subsection (a) shall be submitted on a form
39 prescribed by the secretary. Such report shall be submitted in a
40 manner prescribed by the secretary.

41 (c) The secretary may adopt rules and regulations as are necessary to
42 carry out the provisions of this section.

43 (d) The secretary may use any report received pursuant to this section

1 to determine eligibility for unemployment benefits.

2 (e) This section shall be a part of and supplemental to the
3 employment security law.

4 Sec. 4. K.S.A. 2012 Supp. 44-706 is hereby amended to read as
5 follows: 44-706. An individual shall be disqualified for benefits:

6 (a) If the individual left work voluntarily without good cause
7 attributable to the work or the employer, subject to the other provisions of
8 this subsection. Failure to return to work after expiration of approved
9 personal or medical leave, or both, shall be considered a voluntary
10 resignation. After a temporary job assignment, failure of an individual to
11 affirmatively request an additional assignment on the next succeeding
12 workday, if required by the employment agreement, after completion of a
13 given work assignment, shall constitute leaving work voluntarily. The
14 disqualification shall begin the day following the separation and shall
15 continue until after the individual has become reemployed and has had
16 earnings from insured work of at least three times the individual's weekly
17 benefit amount. An individual shall not be disqualified under this
18 subsection if:

19 (1) The individual was forced to leave work because of illness or
20 injury upon the advice of a licensed and practicing health care provider
21 and, upon learning of the necessity for absence, immediately notified the
22 employer thereof, or the employer consented to the absence, and after
23 recovery from the illness or injury, when recovery was certified by a
24 practicing health care provider, the individual returned to the employer and
25 offered to perform services and the individual's regular work or
26 comparable and suitable work was not available. As used in this paragraph
27 "health care provider" means any person licensed by the proper licensing
28 authority of any state to engage in the practice of medicine and surgery,
29 osteopathy, chiropractic, dentistry, optometry, podiatry or psychology;

30 (2) the individual left temporary work to return to the regular
31 employer;

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

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

42 (5) the individual left work because of hazardous working conditions;
43 in determining whether or not working conditions are hazardous for an

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

15 (6) the individual left work to enter training approved under section
16 236(a)(1) of the federal trade act of 1974, provided the work left is not of a
17 substantially equal or higher skill level than the individual's past adversely
18 affected employment (as defined for purposes of the federal trade act of
19 1974), and wages for such work are not less than 80% of the individual's
20 average weekly wage as determined for the purposes of the federal trade
21 act of 1974;

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

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

33 (9) the individual left work as a result of being instructed or requested
34 by the employer, a supervisor or a fellow employee to perform a service or
35 commit an act in the scope of official job duties which is in violation of an
36 ordinance or statute;

37 (10) the individual left work because of a violation of the work
38 agreement by the employing unit and, before the individual left, the
39 individual had exhausted all remedies provided in such agreement for the
40 settlement of disputes before terminating;

41 (11) after making reasonable efforts to preserve the work, the
42 individual left work due to a personal emergency of such nature and
43 compelling urgency that it would be contrary to good conscience to

1 impose a disqualification; or

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

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

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

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

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

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

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

19 (i) A restraining order or other documentation of equitable relief by a
20 court of competent jurisdiction; ~~or~~

21 (ii) a police record documenting the abuse; ~~or~~

22 (iii) documentation that the abuser has been convicted of one or more
23 of the offenses enumerated in articles 34 and 35 of chapter 21 of the
24 Kansas Statutes Annotated, prior to their repeal, or articles 54 or 55 of
25 chapter 21 of the Kansas Statutes Annotated, or K.S.A. 2012 Supp. 21-
26 6104, 21-6325, 21-6326 or 21-6418 through 21-6421, and amendments
27 thereto, where the victim was a family or household member; ~~or~~

28 (iv) medical documentation of the abuse; ~~or~~

29 (v) a statement provided by a counselor, social worker, health care
30 provider, clergy, shelter worker, legal advocate, domestic violence or
31 sexual assault advocate or other professional who has assisted the
32 individual in dealing with the effects of abuse on the individual or the
33 individual's family; or

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

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

39 (b) If the individual has been discharged for misconduct connected
40 with the individual's work. The disqualification shall begin the day
41 following the separation and shall continue until after the individual
42 becomes reemployed and has had earnings from insured work of at least
43 three times the individual's determined weekly benefit amount, except that

1 if an individual is discharged for gross misconduct connected with the
2 individual's work, such individual shall be disqualified for benefits until
3 such individual again becomes employed and has had earnings from
4 insured work of at least eight times such individual's determined weekly
5 benefit amount. In addition, all wage credits attributable to the
6 employment from which the individual was discharged for gross
7 misconduct connected with the individual's work shall be canceled. No
8 such cancellation of wage credits shall affect prior payments made as a
9 result of a prior separation.

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

18 (2) For the purposes of this subsection, the use of or impairment
19 caused by alcoholic liquor, a cereal malt beverage or a nonprescribed
20 controlled substance by an individual while working shall be conclusive
21 evidence of misconduct and the possession of alcoholic liquor, a cereal
22 malt beverage or a nonprescribed controlled substance by an individual
23 while working shall be prima facie evidence of conduct which is a
24 violation of a duty or obligation reasonably owed to the employer as a
25 condition of employment. Alcoholic liquor shall be defined as provided in
26 K.S.A. 41-102, and amendments thereto. Cereal malt beverage shall be
27 defined as provided in K.S.A. 41-2701, and amendments thereto.
28 Controlled substance shall be defined as provided in K.S.A. 2012 Supp.
29 21-5701, and amendments thereto. As used in this paragraph, "required by
30 law" means required by a federal or state law, a federal or state rule or
31 regulation having the force and effect of law, a county resolution or
32 municipal ordinance, or a policy relating to public safety adopted in open
33 meeting by the governing body of any special district or other local
34 governmental entity. Chemical test shall include, but is not limited to, tests
35 of urine, blood or saliva. A positive chemical test shall mean a chemical
36 result showing a concentration at or above the levels listed in K.S.A. 44-
37 501, and amendments thereto, for the drugs or abuse listed therein. A
38 positive breath test shall mean a test result showing an alcohol
39 concentration of .04 or greater. Alcohol concentration means the number
40 of grams of alcohol per 210 liters of breath. An individual's refusal to
41 submit to a chemical test or breath alcohol test shall be conclusive
42 evidence of misconduct if the test meets the standards of the drug free
43 workplace act, 41 U.S.C. § 701 et seq.; the test was administered as part of

1 an employee assistance program or other drug or alcohol treatment
2 program in which the employee was participating voluntarily or as a
3 condition of further employment; the test was otherwise required by law
4 and the test constituted a required condition of employment for the
5 individual's job; the test was requested pursuant to a written policy of the
6 employer of which the employee had knowledge and was a required
7 condition of employment; or there was probable cause to believe that the
8 individual used, possessed or was impaired by alcoholic liquor, a cereal
9 malt beverage or a controlled substance while working. A positive breath
10 alcohol test or a positive chemical test shall be conclusive evidence to
11 prove misconduct if the following conditions are met:

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

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

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

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

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

5 (F) the breath alcohol test was administered by an individual trained
6 to perform breath tests, the breath testing instrument used was certified
7 and operated strictly according to description provided by the
8 manufacturers and the reliability of the instrument performance was
9 assured by testing with alcohol standards; and

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

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

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

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

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

23 (iv) the employee had knowledge of the employer's written
24 absenteeism policy.

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

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

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

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

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

1 (c) If the individual has failed, without good cause, to either apply for
2 suitable work when so directed by the employment office of the secretary
3 of labor, or to accept suitable work when offered to the individual by the
4 employment office, the secretary of labor, or an employer, such
5 disqualification shall begin with the week in which such failure occurred
6 and shall continue until the individual becomes reemployed and has had
7 earnings from insured work of at least three times such individual's
8 determined weekly benefit amount. In determining whether or not any
9 work is suitable for an individual, the secretary of labor, or a person or
10 persons designated by the secretary, shall consider the degree of risk
11 involved to health, safety and morals, physical fitness and prior training,
12 experience and prior earnings, length of unemployment and prospects for
13 securing local work in the individual's customary occupation or work for
14 which the individual is reasonably fitted by training or experience, and the
15 distance of the available work from the individual's residence.
16 Notwithstanding any other provisions of this act, an otherwise eligible
17 individual shall not be disqualified for refusing an offer of suitable
18 employment, or failing to apply for suitable employment when notified by
19 an employment office, or for leaving the individual's most recent work
20 accepted during approved training, including training approved under
21 section 236(a)(1) of the trade act of 1974, if the acceptance of or applying
22 for suitable employment or continuing such work would require the
23 individual to terminate approved training and no work shall be deemed
24 suitable and benefits shall not be denied under this act to any otherwise
25 eligible individual for refusing to accept new work under any of the
26 following conditions: (1) If the position offered is vacant due directly to a
27 strike, lockout or other labor dispute; (2) if the remuneration, hours or
28 other conditions of the work offered are substantially less favorable to the
29 individual than those prevailing for similar work in the locality; (3) if as a
30 condition of being employed, the individual would be required to join or
31 resign from or refrain from joining any labor organization; and (4) if the
32 individual left employment as a result of domestic violence, and the
33 position offered does not reasonably accommodate the individual's
34 physical, psychological, safety, and/or legal needs relating to such
35 domestic violence.

36 (d) For any week with respect to which the secretary of labor, or a
37 person or persons designated by the secretary, finds that the individual's
38 unemployment is due to a stoppage of work which exists because of a
39 labor dispute or there would have been a work stoppage had normal
40 operations not been maintained with other personnel previously and
41 currently employed by the same employer at the factory, establishment or
42 other premises at which the individual is or was last employed, except that
43 this subsection (d) shall not apply if it is shown to the satisfaction of the

1 secretary of labor, or a person or persons designated by the secretary, that:
2 (1) The individual is not participating in or financing or directly interested
3 in the labor dispute which caused the stoppage of work; and (2) the
4 individual does not belong to a grade or class of workers of which,
5 immediately before the commencement of the stoppage, there were
6 members employed at the premises at which the stoppage occurs any of
7 whom are participating in or financing or directly interested in the dispute.
8 If in any case separate branches of work which are commonly conducted
9 as separate businesses in separate premises are conducted in separate
10 departments of the same premises, each such department shall, for the
11 purpose of this subsection be deemed to be a separate factory,
12 establishment or other premises. For the purposes of this subsection,
13 failure or refusal to cross a picket line or refusal for any reason during the
14 continuance of such labor dispute to accept the individual's available and
15 customary work at the factory, establishment or other premises where the
16 individual is or was last employed shall be considered as participation and
17 interest in the labor dispute.

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

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

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

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

41 (i) For any week of unemployment on the basis of service in an
42 instructional, research or principal administrative capacity for an
43 educational institution as defined in subsection (v) of K.S.A. 44-703, and

1 amendments thereto, if such week begins during the period between two
2 successive academic years or terms or, when an agreement provides
3 instead for a similar period between two regular but not successive terms
4 during such period or during a period of paid sabbatical leave provided for
5 in the individual's contract, if the individual performs such services in the
6 first of such academic years or terms and there is a contract or a reasonable
7 assurance that such individual will perform services in any such capacity
8 for any educational institution in the second of such academic years or
9 terms.

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

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

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

39 (m) For any week on the basis of services performed by an alien
40 unless such alien is an individual who was lawfully admitted for
41 permanent residence at the time such services were performed, was
42 lawfully present for purposes of performing such services, or was
43 permanently residing in the United States under color of law at the time

1 such services were performed, including an alien who was lawfully present
2 in the United States as a result of the application of the provisions of
3 section 212(d)(5) of the federal immigration and nationality act. Any data
4 or information required of individuals applying for benefits to determine
5 whether benefits are not payable to them because of their alien status shall
6 be uniformly required from all applicants for benefits. In the case of an
7 individual whose application for benefits would otherwise be approved, no
8 determination that benefits to such individual are not payable because of
9 such individual's alien status shall be made except upon a preponderance
10 of the evidence.

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

43 (o) For any week of unemployment on the basis of services

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

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

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

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

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

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

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

43 (s) For any week with respect to which an individual is receiving or

1 has received remuneration in the form of a back pay award or settlement.
2 The remuneration shall be allocated to the week or weeks in the manner as
3 specified in the award or agreement, or in the absence of such specificity
4 in the award or agreement, such remuneration shall be allocated to the
5 week or weeks in which such remuneration, in the judgment of the
6 secretary, would have been paid.

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

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

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

24 *(1) Any applicant for or recipient of unemployment benefits who tests
25 positive for {unlawful} use of a controlled substance or controlled
26 substance analog shall be required to complete a substance abuse
27 treatment program approved by the secretary of labor; secretary of
28 commerce or secretary for children and families, and a job skills program
29 approved by the secretary of labor; secretary of commerce or the
30 secretary for children and families. Subject to applicable federal laws,
31 any applicant for or recipient of unemployment benefits who fails to
32 complete or refuses to participate in the substance abuse treatment
33 program or job skills program as required under this subsection shall be
34 ineligible to receive unemployment benefits until completion of such
35 substance abuse treatment and job skills programs. Upon completion of
36 both substance abuse treatment and job skills programs, such applicant
37 for or recipient of unemployment benefits may be subject to periodic drug
38 screening, as determined by the secretary of labor. Upon a second positive
39 test for {unlawful} use of a controlled substance or controlled substance
40 analog, an applicant for or recipient of unemployment benefits shall be
41 ordered to complete again a substance abuse treatment program and job
42 skills program, and shall be terminated from unemployment benefits for a
43 period of 12 months, or until such applicant for or recipient of*

1 unemployment benefits completes both substance abuse treatment and job
2 skills programs, whichever is later. Upon a third positive test for
3 ~~{unlawful}~~ use of a controlled substance or controlled substance analog,
4 an applicant for or a recipient of unemployment benefits shall be
5 terminated from receiving unemployment benefits, subject to applicable
6 federal law.

7 ~~*{The secretary for children and families shall fund such substance*~~
8 ~~*abuse treatment program and job skills program with the funding*~~
9 ~~*available from TANF, provided that the federal law and regulations*~~
10 ~~*allow such expenditure and the applicant or the recipient are not*~~
11 ~~*otherwise eligible for medical assistance under subsection (c). If the*~~
12 ~~*federal law and regulations do not allow such expenditure, the secretary*~~
13 ~~*for children and families shall expend moneys appropriated from the*~~
14 ~~*state general fund to administer and operate such programs. When the*~~
15 ~~*federal or any other funding is not available to fund such expenditures,*~~
16 ~~*the secretary for children and families shall expend moneys from the*~~
17 ~~*state general fund to administer and operate such programs.*~~

18 (2) Any individual who has been discharged or refused employment
19 for failing a preemployment drug screen required by an employer may
20 request that the drug screening specimen be sent to a different drug testing
21 facility for an additional drug screening. Any such individual who requests
22 an additional drug screening at a different drug testing facility shall be
23 required to pay the cost of drug screening.

24 (u) If the individual was found not to have a disqualifying
25 adjudication or conviction under K.S.A. 39-970, and amendments thereto,
26 or K.S.A. 65-5117, and amendments thereto, was hired and then was
27 subsequently convicted of a disqualifying felony under K.S.A. 39-970, and
28 amendments thereto, or K.S.A. 65-5117, and amendments thereto, and
29 discharged pursuant to K.S.A. 39-970, and amendments thereto, or K.S.A.
30 65-5117, and amendments thereto. The disqualification shall begin the day
31 following the separation and shall continue until after the individual
32 becomes reemployed and has had earnings from insured work of at least
33 three times the individual's determined weekly benefit amount.

34 *{Sec. 5. K.S.A. 2012 Supp. 75-4362 is hereby amended to read as*
35 *follows: 75-4362. (a) The director of the division of personnel services of*
36 *the department of administration shall have the authority to establish*
37 *and implement a drug screening program for persons taking office as*
38 *governor, lieutenant governor*~~or~~*, attorney general or members of the*
39 *Kansas senate or house of representatives and for applicants for safety*
40 *sensitive positions in state government, but no applicant for a safety*
41 *sensitive position shall be required to submit to a test as a part of this*
42 *program unless the applicant is first given a conditional offer of*
43 *employment.*

1 ***(b) The director also shall have the authority to establish and***
2 ***implement a drug screening program based upon a reasonable suspicion***
3 ***of illegal drug use by any person currently holding one of the following***
4 ***positions or offices:***

5 ***(1) The office of governor, lieutenant governor or attorney general;***

6 ***(2) members of the Kansas senate or house of representatives;***

7 ~~***(3) any safety sensitive position;***~~

8 ~~***(4) any position in an institution of mental health, as defined in***~~
9 ***K.S.A. 76-12a01, and amendments thereto, that is not a safety sensitive***
10 ***position;***

11 ~~***(5) any position in the Kansas state school for the blind, as***~~
12 ***established under K.S.A. 76-1101 et seq., and amendments thereto;***

13 ~~***(6) any position in the Kansas state school for the deaf, as***~~
14 ***established under K.S.A. 76-1001 et seq., and amendments thereto; or***

15 ~~***(7) any employee of a state veteran's home operated by the***~~
16 ***Kansas commission on veteran's affairs as described in K.S.A. 76-1901***
17 ***et seq. and K.S.A. 76-1951 et seq., and amendments thereto.***

18 ***(c) Any public announcement or advertisement soliciting***
19 ***applications for employment in a safety sensitive position in state***
20 ***government shall include a statement of the requirements of the drug***
21 ***screening program established under this section for applicants for and***
22 ***employees holding a safety sensitive position.***

23 ***(d) No person shall be terminated solely due to positive results of a***
24 ***test administered as a part of a program authorized by this section if:***

25 ***(1) The employee has not previously had a valid positive test result;***
26 ***and***

27 ***(2) the employee undergoes a drug evaluation and successfully***
28 ***completes any education or treatment program recommended as a result***
29 ***of the evaluation. Nothing herein shall be construed as prohibiting***
30 ***demotions, suspensions or terminations pursuant to K.S.A. 75-2949e or***
31 ***75-2949f, and amendments thereto.***

32 ***(e) Except in hearings before the state civil service board regarding***
33 ***disciplinary action taken against the employee, the results of any test***
34 ***administered as a part of a program authorized by this section shall be***
35 ***confidential and shall not be disclosed publicly.***

36 ***(f) The secretary of administration may adopt such rules and***
37 ***regulations as necessary to carry out the provisions of this section.***

38 ***(g) "Safety sensitive positions" means the following:***

39 ***(1) All state law enforcement officers who are authorized to carry***
40 ***firearms;***

41 ***(2) all state corrections officers;***

42 ***(3) all state parole officers;***

43 ***(4) heads of state agencies who are appointed by the governor and***

1 *employees on the governor's staff;*

2 *(5) all employees with access to secure facilities of a correctional*
3 *institution, as defined in K.S.A. 2012 Supp. 21-5914, and amendments*
4 *thereto;*

5 *(6) all employees of a juvenile correctional facility, as defined in*
6 *K.S.A. 2012 Supp. 38-2302, and amendments thereto; and*

7 *(7) all employees within an institution of mental health, as defined*
8 *in K.S.A. 76-12a01, and amendments thereto, who provide clinical,*
9 *therapeutic or habilitative services to the clients and patients of those*
10 *institutions.}*

11 ~~Sec.-5: {6.}~~ K.S.A. 2012 Supp. 39-709, 39-709e ~~and {,}~~ 44-706 ~~{and~~
12 ~~75-4362}~~ are hereby repealed.

13 ~~Sec.-6: {7.}~~ This act shall take effect and be in force from and after its
14 publication in the statute book.