

MINUTES OF THE House COMMITTEE ON Labor & IndustryThe meeting was called to order by Representative Arthur Douville at
Chairperson9:00 a.m./~~p.m.~~ on February 25, 1987 in room 526-S of the Capitol.

All members were present except:

Representative R. D. Miller - Excused

Committee staff present:

Jerry Ann Donaldson, Research Department
Jim Wilson, Revisor of Statutes' Office
Juel Bennewitz, Secretary to the Committee

Conferees appearing before the committee:

Larry Oakley, Beech Aircraft

The chairman began the meeting by mentioning the additional needs for changes regarding H.B. 2186 since hearings on the bill had begun. He said that a package of amendments had been prepared to attempt to address those concerns. Some of the input came from Representatives O'Neal and Bideau and various trial attorneys. Chairman Douville asked the members of the committee to study the proposed amendments and determination as to what should be done would begin the next day.

In the area of rehabilitation, Chairman Douville said that there were many problems to be addressed and that an effort would be made to draft an amendment dealing only with that area. He also pointed out that this may need to be in the form of a separate bill.

Larry Oakley of Beech Aircraft addressed the committee, attachment #1. He explained the company's rehabilitation program at the request of the chairman.

Chairman Douville noted that Mr. Oakley had suggested that the Division of Rehabilitation not be under the control of a carrier and asked why. Mr. Oakley responded that he did not agree with the language as it was written and suggested that there should be controls so there would be no abuse of the system.

The chairman asked if Mr. Oakley objected to rehabilitation specialists being appointed by the Division of Workers' Compensation. The response was negative but he went on to say that he would like to see development of a rehabilitation plan and do testing. The plan would be submitted to the state for approval after being agreed on by the physician, employer and employee.

At the chairman's request, Representatives Bideau and O'Neal reviewed proposed changes to H.B. 2186, using a balloon version of the bill, attachment #2.

Jim Wilson explained to the committee a long amendment regarding venue and bond requirements.

Representative Whiteman noted the shortage of time in which the committee had to deal with the amendments. Regarding how awards would be affected, she asked for statistics and for input from conferees who had testified. She also stated a desire to hear from the director's office how these proposed changes would affect that office.

Chairman Douville asked Bill Morrissey, Department of Human Resources, Division of Workers' Compensation, if determining attorneys' fees would take the director's office a longer period of time to render a decision.

CONTINUATION SHEET

MINUTES OF THE House COMMITTEE ON Labor & Industry,
room 526-S, Statehouse, at 9:00 a.m./~~p.m.~~ on February 25, 1987

Mr. Morrissey responded that he felt it would initially until the system was operational but that he did not view it as a problem.

A sheet of statistics comparing Kansas to surrounding states in benefits paid for workers' compensation insurance was distributed to the committee, attachment #3.

The meeting was adjourned at 9:50 a.m.

The next meeting will be February 26, 1987, at 9:00 a.m.



STATEMENT BEFORE THE
KANSAS HOUSE COMMITTEE ON LABOR AND INDUSTRY
FEBRUARY 24, 1987

Mr. Chairman, members of the committee, my name is Larry Oakley, Administrator of Workers Compensation for Beech Aircraft Corporation. We have aircraft manufacturing plants in Wichita, Salina and Andover. I appreciate the opportunity to express our position regarding the addition of a vocational rehabilitation component to the current workers' compensation law.

It is Beech's position that HB2186 will encourage employers and insurance carriers to provide rehabilitation services to injured workers. We feel that it may not be necessary to structure a formalized program within the law to accomplish this goal.

We believe that Beech Aircraft Corporation is a leader in developing a return-to-work format for it's injured employees. We also believe that the control for this format should stay in the hands of the employers so that immediate " Early Intervention" services can be provided.

If vocational rehabilitation is to become a component of the new legislation we suggest that an option be included in the language for employers to submit, in writing, for state approval, a formalized rehabilitation program that we will follow to return injured workers to a competitive job environment.

Vocational Rehabilitation is a complex issue. Many factors have to be considered in the process, a person's intellectual aptitude, education level, motivation and psychological factors to name a few. It may be possible because

of any one or a combination of these factors that a person is not able to return to the level of earning potential they had before. We feel there should still be recognition of the employer's effort for maximizing the injured worker's post-injury earning potential and this consideration is not mentioned in the draft legislation as submitted last week. This could be done in the form of a tax credit to the employer or a modified compensation settlement that would reflect the efforts and funds expended to return this person to the competitive job market even if he or she doesn't have the same earning potential.

Early Intervention is a rehabilitation philosophy and format that we embrace. Beech feels that the rehabilitation process has to begin immediately after the injury occurs. Under the draft legislation, there is the possibility of 100 days passing before any substantive services are provided. This nearly equals the time necessary to determine eligibility by the State Division of Rehabilitation Programs and it is not the responsive model that has been discussed over the past three years. It would essentially be a duplication of services already provided by the State Division of Rehabilitation Programs.

Beech is also concerned that a new tax on employers has been proposed to establish a rehabilitation fund. Statements were made last week that this tax would raise five hundred thousand dollars of which two hundred to two hundred and fifty thousand dollars would be used to administer the program. We cannot support a program with administrative costs as high as they were estimated to be last week. Under a private rehabilitation system, these costs would be factored into the insurance premiums charged by the carriers and self-insured companies like Beech Aircraft will figure the costs of rehabilitation into their annual compensation

budget. We do not feel there is a need to establish a state fund to pay for these services.

In our judgement, vocational rehabilitation should be a key component of the workers' compensation system. The draft of this legislation does not meet the response level required for an "Early Intervention" approach to rehabilitation. We feel those controls have to stay with the employer or their agent and that private rehabilitation firms have the tools to respond to this philosophy and format.

Thank you.

HOUSE BILL No. 2186

By Committee on Labor and Industry

2-4

0017 AN ACT relating to workers compensation; concerning legisla-
0018 tive intent; medical compensation; compensation for death
0019 and temporary and permanent disabilities; definitions; limi-
0020 tations on compensation and attorney fees; failure to pay
0021 compensation due; medical evidence; review of awards; cita-
0022 tion of act; amending K.S.A. 44-501, 44-508, 44-510, 44-510b,
0023 44-510c, 44-510d, 44-510e, 44-510f, 44-511, 44-512a, 44-519,
0024 44-528, 44-534a, 44-536, 44-567 and 44-574 and repealing the
0025 existing sections.

0026 *Be it enacted by the Legislature of the State of Kansas:*

0027 Section 1. K.S.A. 44-501 is hereby amended to read as fol-
0028 lows: 44-501. (a) If in any employment to which the ~~workmen's~~
0029 *workers* compensation act applies, personal injury by accident
0030 arising out of and in the course of employment is caused to an
0031 employee, the employer shall be liable to pay compensation to
0032 the employee in accordance with the provisions of the ~~work-~~
0033 *men's workers* compensation act. In proceedings under the
0034 ~~workmen's workers~~ compensation act, the burden of proof shall
0035 be on the claimant to establish the claimant's right to an award of
0036 compensation ^{and prove} ~~by proving~~ the various conditions on which the
0037 claimant's right depends. ~~x~~

0038 (b) Except as provided in the ~~workmen's workers~~ compensa-
0039 tion act, no employer, or other employee of such employer, shall
0040 be liable for any injury for which compensation is recoverable
0041 under the ~~workmen's workers~~ compensation act nor shall an
0042 employer be liable to any third party for any injury or death of an
0043 employee which was caused under circumstances creating a
0044 legal liability against a third party and for which ~~workmen's~~
0045 *workers* compensation is payable by such employer.

0046 (c) Except for liability for medical compensation, as provided

In determining whether the claimant has satisfied this burden of proof, the trier of fact shall consider the whole record.

0047 for in K.S.A. 44-510 and amendments thereto, the employer shall
0048 not be liable under the ~~workmen's~~ *workers* compensation act in
0049 respect of any injury which does not disable the employee for a
0050 period of at least one week from earning full wages at the work at
0051 which the employee is employed.

0052 (d) If it is proved that the injury to the employee results from
0053 the employee's deliberate intention to cause such injury, or from
0054 the employee's willful failure to use a guard or protection against
0055 accident required pursuant to any statute and provided for the
0056 employee, or a reasonable and proper guard and protection
0057 voluntarily furnished the employee by the employer, or sub-
0058 stantially from the employee's intoxication, any compensation in
0059 respect to that injury shall be disallowed. The employer shall not
0060 be liable under the ~~workmen's~~ *workers* compensation act where
0061 the injury ~~or~~ death was substantially caused by the employee's
0062 use of any drugs, chemicals or any other compounds or sub-
0063 stances, including but not limited to, any form or type of narcotic
0064 drugs, marijuana, stimulants, depressants or hallucinogens, ex-
0065 cept such drugs or medications which are available to the public
0066 without a prescription from a physician and which are used for
0067 the treatment of an illness, or which were obtained and used by
0068 the employee pursuant to and in accordance with such a pre-
0069 scription.

0070 (e) Compensation shall not be paid in case of coronary or
0071 coronary artery disease or cerebrovascular injury unless it is
0072 shown that the exertion of the work necessary to precipitate the
0073 disability was more than the employee's usual work in the course
0074 of the employee's regular employment.

0075 (f) Except as provided in the ~~workmen's~~ *workers* compensa-
0076 tion act, no construction design professional who is retained to
0077 perform professional services on a construction project or any
0078 employee of a construction design professional who is assisting
0079 or representing the construction design professional in the per-
0080 formance of professional services on the site of the construction
0081 project, shall be liable for any injury resulting from the em-
0082 ployer's failure to comply with safety standards on the construc-
0083 tion project for which compensation is recoverable under the

, disability

0084 workmen's workers compensation act, unless responsibility for
 0085 safety practices is specifically assumed by contract. The immu-
 0086 nity provided by this subsection to any construction design
 0087 professional shall not apply to the negligent preparation of de-
 0088 sign plans or specifications.

0089 (g) *It is the specific intent of the legislature that workers*
 0090 *compensation cases shall be decided on their merits and that the*
 0091 *common-law rule of liberal construction based on the supposed*
 0092 *remedial basis of workers compensation legislation shall not*
 0093 *apply in such cases. The workers compensation act is based on a*
 0094 *mutual renunciation of common-law rights and defenses by*
 0095 *employer and employees alike. Employee rights to sue for dam-*
 0096 *ages over and above medical benefits and wage loss benefits are*
 0097 *limited by the workers compensation act and employer rights to*
 0098 *raise common-law defenses such as lack of negligence, contrib-*
 0099 *utory negligence on the part of the employee, and other de-*
 0100 *fenses, are also limited by the workers compensation act. Ac-*
 0101 *cordingly, the legislature hereby declares that the workers*
 0102 *compensation act is not remedial in any sense and is not to be*
 0103 *given a broad liberal construction in favor of the claimant or*
 0104 *employee on the one hand, nor are the rights and interests of the*
 0105 *employer to be favored over those of the employee on the other*
 0106 *hand.*

(g) It is the intent of the legislature that the workers compensation act shall be liberally construed for the purpose of bringing employers and employees within the provisions of the act to provide the protections of the workers compensation act to both. The provisions of the workers compensation act shall be applied impartially as to both employers and employees in cases arising thereunder.

0107 Sec. 2. K.S.A. 44-508 is hereby amended to read as follows:
 0108 44-508. As used in the workmen's workers compensation act:
 0109 (a) "Employer" includes (1) any person or body of persons,
 0110 corporate or unincorporate, and the legal representative of a
 0111 deceased employer or the receiver or trustee of a person, corpo-
 0112 ration, association or partnership; (2) the state, or any depart-
 0113 ment, agency or authority of the state, any city, county, school
 0114 district, or other political subdivision or municipality or public
 0115 corporation and any instrumentality thereof; and (3) for the
 0116 purposes of community service work, the entity for which the
 0117 community service work is being performed and the govern-
 0118 mental agency which assigned the community service work, if
 0119 any, if either such entity or such governmental agency has filed a
 0120 written statement of election with the director to accept the

0121 provisions under the ~~workmen's~~ *workers* compensation act for
0122 persons performing community service work and in such case
0123 such entity and such governmental agency shall be deemed to be
0124 the joint employer of the person performing the community
0125 service work and both shall have the rights, liabilities and
0126 immunities provided under the ~~workmen's~~ *workers* compensa-
0127 tion act for an employer with regard to the community service
0128 work, except that the liability for providing benefits shall be
0129 imposed only on the party which filed such election with the
0130 director, or on both if both parties have filed such election with
0 the director; for purposes of community service work, "govern-
0132 mental agency" shall not include any court or any officer or
0133 employee thereof and any case where there is deemed to be a
0134 "joint employer" shall not be construed to be a case of dual or
0135 multiple employment.

0136 (b) "Workman" or "employee" or "worker" means any per-
0137 son who has entered into the employment of or works under any
0138 contract of service or apprenticeship with an employer. Such
0139 terms shall include but not be limited to: Executive officers of
0140 corporations; professional athletes; persons serving on a volun-
0141 teer basis as duly authorized law enforcement officers, ambu-
0142 lance attendants, mobile intensive care technicians, firemen or
0143 firefighters, but only to the extent and during such periods as
0144 they are so serving in such capacities; persons employed by
0 educational, religious and charitable organizations, but only to
0146 the extent and during the periods that they are paid wages by
0147 such organizations; persons in the service of the state, or any
0148 department, agency or authority of the state, any city, school
0149 district, or other political subdivision or municipality or public
0150 corporation and any instrumentality thereof, under any contract
0151 of service, express or implied, and every official or officer
0152 thereof, whether elected or appointed, while performing official
0153 duties; volunteers in any employment, if the employer has filed
0154 an election to extend coverage to such volunteers; minors,
0155 whether such minors are legally or illegally employed; and
0156 persons performing community service work, but only to the
0157 extent and during such periods as they are performing commu-

0158 nity service work and if an election has been filed an election to
0159 extend coverage to such persons. Any reference to an employee
0160 who has been injured shall, where the employee is dead, include
0161 a reference to the employee's dependents, to the employee's
0162 legal representatives, or, if the employee is a minor or an inca-
0163 pacitated person, to the employee's guardian or conservator.
0164 Unless there is a valid election in effect which has been filed as
0165 provided in K.S.A. 44-542a and amendments thereto, such terms
0166 shall not include individual employers, limited or general
0167 partners or self-employed persons.

01 (c) (1) "Dependents" means such members of the em-
0169 ployee's family as were wholly or in part dependent upon the
0170 employee at the time of the accident.

0171 (2) "Members of a family" means only surviving legal spouse
0172 and children; or if no surviving legal spouse or children, then
0173 parents or grandparents; or if no parents or grandparents, then
0174 grandchildren; or if no grandchildren, then brothers and sisters.
0175 In the meaning of this section, parents include stepparents,
0176 children include stepchildren, grandchildren include step-
0177 grandchildren, brothers and sisters include stepbrothers and
0178 stepsisters, and children and parents include that relation by
0179 legal adoption. In the meaning of this section, a surviving spouse
0180 shall not be regarded as a dependent of a deceased employee or
0181 as a member of the family, if the surviving spouse shall have for
0182 more than six months willfully or voluntarily deserted or aban-
0183 doned the employee prior to the date of the employee's death.

0184 (3) "Wholly dependent child or children" means:

0185 (A) A natural or adopted child of the employee except such a
0186 child whose relationship to the employee has been severed by
0187 adoption;

0188 (B) a stepchild of the employee who lives in the employee's
0189 household; or

0190 (C) any other child who is actually dependent in whole or in
0191 part on the employee and who is related to the employee by
0192 marriage or consanguinity; or

0193 (D) any child as defined in subsections (3)(A), (3)(B) or (3)(C)
0194 who is less than 23 years of age and who is not physically or

0195 mentally capable of earning wages in any type of substantial and
0196 gainful employment or who is ~~enrolled as~~ a full-time student ~~in~~
0197 an accredited institution of higher education or vocational edu-
0198 cation.

attending

o c

0199 (d) "Accident" means an undesigned, sudden and unex-
0200 pected event or events, usually of an afflictive or unfortunate
0201 nature and often, but not necessarily, accompanied by a man-
0202 ifestation of force. ~~For purposes of the workers compensation~~
0203 ~~act, the date of accident for personal injury due to a repetitive~~
0204 ~~use syndrome shall be the date of onset of the symptoms of the~~

0205 ~~injury~~ The elements of an accident, as stated herein, are not to
0206 be construed in a strict and literal sense, but in a manner
0207 designed to effectuate the purpose of the ~~workmen's~~ compensa-
0208 tion act that the employer bear the expense of accidental injury
0209 to a worker caused by the employment.

workers

0210 (e) "Personal injury" and "injury" mean any lesion or change
0211 in the physical structure of the body, causing damage or harm
0212 thereto, so that it gives way under the stress of the worker's usual
0213 labor. It is not essential that such lesion or change be of such
0214 character as to present external or visible signs of its existence.

workers

0215 (f) The words "arising out of and in the course of employ-
0216 ment" as used in the ~~workmen's~~ compensation act shall not be
0217 construed to include injuries to the employee occurring while
0218 the employee is on the way to assume the duties of employment
0219 or after leaving such duties, the proximate cause of which injury
0220 is not the employer's negligence. An employee shall not be
0221 construed as being on the way to assume the duties of employ-
0222 ment or having left such duties at a time when the worker is on
0223 the premises of the employer or on the only available route to or
0224 from work which is a route involving a special risk or hazard and
0225 which is a route not used by the public except in dealings with
0226 the employer.

0227 (g) "Burden of proof" means the burden of a party to per-
0228 suade the trier of facts by a preponderance of the credible
0229 evidence that such party's position on an issue is more probably
0230 true than not true.

on the basis of the whole record

0231 (h) "Director" means the director of workers' compensation

0232 as provided for in K.S.A. 75-5708 and amendments thereto.

0233 (i) The words "physician," "surgeon" or "doctor" shall mean
0234 and include any person licensed, by the proper licensing au-
0235 thority of this state, another state or the District of Columbia, to
0236 practice medicine and surgery, osteopathy, chiropractic, den-
0237 tistry, optometry or podiatry.

0238 (j) "Secretary" means the secretary of human resources.

0239 (k) "Construction design professional" means any person
0240 who is an architect, professional engineer, landscape architect or
0241 land surveyor who has been issued a license by the state board of
0242 technical professions to practice such technical profession in
0243 Kansas or any corporation organized to render professional ser-
0244 vices through the practice of one or more of such technical
0245 professions in Kansas under the professional corporation law of
0246 Kansas or any corporation issued a certificate of authorization
0247 under K.S.A. 74-7036 and amendments thereto to practice one or
0248 more of such technical professions in Kansas.

0249 (l) "Community service work" means public or community
0250 service performed as a result of a contract of diversion or of
0251 assignment to a community corrections program or suspension of
0252 sentence or as a condition of probation or in lieu of a fine
0253 imposed by court order.

0254 Sec. 3. K.S.A. 44-510 is hereby amended to read as follows:

0255 44-510. Except as otherwise provided in this act *therein*, medical
0256 compensation under the ~~workmen's~~ workers compensation act
0257 shall be as follows: (a) It shall be the duty of the employer to
0258 provide the services of a physician, and such medical, surgical
0259 and hospital treatment, including nursing, medicines, medical
0260 and surgical supplies, ambulance, crutches, and apparatus, and
0261 transportation to and from the home of the injured employee to a
0262 place outside the community in which such employee resides,
0263 and within such community if the director in the director's
0264 discretion so orders, as may be reasonably necessary to cure and
0265 relieve the employee from the effects of the injury. All fees,
0266 transportation costs and charges under this section shall be
0267 subject to ~~regulations~~ by the director and shall be limited to such
0268 as are fair ~~and~~ reasonable. The director shall have jurisdiction to

In heavy case

approval

and necessary

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0269 hear and determine all disputes as to such charges and interest
0270 due thereon.

0271 (b) Any physician, nurse, medical supply establishment, sur-
0272 gical supply establishment, ambulance service or hospital who
0273 accept the terms of the ~~workmen's~~ workers compensation act by
0274 providing services or material thereunder shall be bound by the
0275 fees approved by the director and no injured employee or de-
0276 pendent of a deceased employee shall be liable for any charges
0277 above the amounts approved by the director. If the employer has
0278 knowledge of the injury and refuses or neglects to reasonably
0279 provide the benefits herein required, the employee may provide
0280 the same for such employee, and the employer shall be liable for
0281 such expenses subject to the regulations adopted by the director.
0282 *No judgment may be entered by any district court in any action*
0283 *for the payment of an amount for medical services or materials*
0284 *provided under the workers compensation act and such action*
0285 *shall be stayed until final adjudication of any claim for com-*
0286 *ensation for which an application for hearing is filed with the*
0287 *director under K.S.A. 44-534 and amendments thereto. In the*
0288 *case of an action stayed hereunder, any award of compensation*
0289 *shall require any amounts payable for medical services or ma-*
0290 *terials to be paid directly to the provider thereof plus an amount*
0291 *of interest at the rate provided by statute for judgments.*

0292 (c) If the services of the physician furnished as above pro-
0293 vided in subsection (a) are not satisfactory to the injured em-
0294 ployee, the director may authorize the appointment of some
0295 other physician subject to the limitations set forth in this section
0296 and the regulations adopted by the director. If the services of a
0297 physician furnished as above provided are not satisfactory to the
0298 injured employee, such employee may consult, without the
0299 approval of the director, another physician of the employee's
0300 own choice, and the employer shall pay the fees and charges
0301 therefor. If such fees and charges are for examination, diagnosis,
0302 or treatment, such fees and charges shall not exceed *Without*
0303 *application or approval, an employee may consult a physician of*
0304 *the employee's choice for the purpose of obtaining the opinion*
0305 *of such physician or for examination, ~~diagnosis or treatment,~~*

OR

0306 but the employer shall only be liable for the fees and charges of
0307 such physician up to a total amount of \$350.

0308 (d) An injured employee whose injury or disability has been
0309 established under the workmen's workers compensation act may
0310 rely, if done in good faith, solely or partially on treatment by
0311 prayer or spiritual means in accordance with the tenets of prac-
0312 tice of a church or religious denomination without suffering a
0313 loss of benefits subject to the following conditions:

0314 (1) The employer or the employer's insurance carrier agrees
0315 thereto in writing either before or after the injury;

0316 (2) the employee submits to all physical examinations re-
0317 quired by the workmen's workers compensation act;

0318 (3) the cost of such treatment shall be paid by the employee
0319 unless the employer or insurance carrier agrees to make such
0320 payment;

0321 (4) the injured employee shall be entitled only to benefits
0322 that would reasonably have been expected had such employee
0323 undergone medical or surgical treatment; and

0324 (5) the employer or insurance carrier that made an agreement
0325 under paragraph (1) or (3) of this subsection may withdraw from
0326 the agreement on 10 days' written notice.

0327 Sec. 4. K.S.A. 44-510b is hereby amended to read as follows:
0328 44-510b. Where death results from injury, compensation shall be
0329 paid as provided in K.S.A. 44-510 and amendments thereto, and
0330 follows:

0331 (a) If an employee leaves any dependents wholly dependent
0332 upon the employee's earnings at the time of the accident, all
0333 compensation benefits under this section shall be paid to such
0334 dependent persons. Such dependents shall be paid weekly
0335 compensation, except as otherwise provided in this section, in a
0336 total sum to all such dependents, equal to 66²/₃% of the average
0337 gross weekly wage of the employee at the time of the accident,
0338 computed as provided in K.S.A. 44-511 and amendments thereto,
0339 but in no event shall such weekly benefits exceed, nor be less
0340 than, the maximum and minimum weekly benefits provided in
0341 K.S.A. 44-510c and amendments thereto, subject to the follow-
0342 ing:

0343 (1) If the employee leaves a surviving legal spouse or a
0344 wholly dependent child or children, or both, who are eligible for
0345 benefits under this section, then all death benefits shall be paid
0346 to such surviving spouse or children, or both, and no benefits
0347 shall be paid to any other wholly or partially dependent persons.

0348 (2) A surviving legal spouse shall be paid compensation
0349 benefits for life or until remarriage, except as otherwise provided
0350 in this section.

0351 (3) Any wholly dependent child of the employee shall be
0352 paid compensation, except as otherwise provided in this section,
03 until such dependent child becomes 18 years of age, except that
0354 any such dependent child who is not physically or mentally
0355 capable of earning wages in any type of substantial and gainful
0356 employment, or who is enrolled as a full-time student in an
0357 accredited institution of higher education or vocational educa-
0358 tion shall be paid compensation until such dependent child
0359 becomes 23 years of age.

0360 (4) If the employee leaves no legal spouse or dependent
0361 children eligible for benefits under this section but leaves other
0362 dependents wholly dependent upon the employee's earnings,
0363 such other dependents shall receive weekly compensation ben-
0364 efits as provided in this subsection until death, remarriage or so
0365 long as such other dependents do not receive more than 50% of
0366 their support from any other earnings or income or from any
03 other source, except that the maximum benefits payable to all
0368 such other dependents, regardless of the number of such other
0369 dependents, shall not exceed a maximum amount of \$18,500.

0370 (b) Upon the remarriage of a surviving legal spouse receiving
0371 compensation under this section, the benefits being paid to such
0372 spouse shall terminate, except that upon such remarriage 100
0373 weeks of benefits at the highest rate paid to such spouse under
0374 this section shall be paid to such spouse in one lump sum.

0375 (c) Where the employee leaves a surviving legal spouse and
0376 dependent children who were wholly dependent upon the em-
0377 ployee's earnings and are eligible for benefits under this section
0378 $\frac{1}{2}$ of the maximum weekly benefits payable shall be apportioned
0379 to such spouse and $\frac{1}{2}$ to such dependent children.

, except that such lump-sum payment shall be subject to the maximum amount of compensation payable under this section as prescribed by subsection (h)

0380 (d) If an employee does not leave any dependents who were
0381 wholly dependent upon the employee's earnings at the time of
0382 the accident but leaves dependents, other than a spouse or
0383 children, in part dependent on the employee's earnings, such
0384 percentage of a sum equal to three times the employee's average
0385 yearly earnings but not exceeding \$18,500 but not less than
0386 \$2,500, as such employee's average annual contributions which
0387 the employee made to the support of such dependents during the
0388 two years preceding the date of the accident, bears to the em-
0389 ployee's average yearly earnings during the contemporaneous
0390 two-year period, shall be paid in compensation to such depen-
0391 dents, in weekly payments as provided in subsection (a), not to
0392 exceed \$18,500 to all such dependents.

0393 (e) The director, except as otherwise provided in this section,
0394 shall have the power and authority to apportion and reapportion
0395 the compensation allowed under this section, either to wholly
0396 dependent persons or partially dependent persons, in accord-
0397 ance with the degree of dependency as of the date of the
0398 accident, except that the weekly payment of compensation to any
0399 and all dependents shall not exceed the maximum weekly ben-
0400 efits provided in subsection (a).

0401 (f) In all cases of death compensable under this section, the
0402 employer shall pay the reasonable expense of burial not exceed-
0403 ing \$3,200.

0404 (g) The marriage or death of any dependent shall terminate
0405 all compensation, under this section, to such dependent, but
0406 shall not increase or decrease the compensation allowed to any
0407 other dependents except that, upon the marriage or death of the
0408 surviving legal spouse or a dependent child, the compensation
0409 payable to such spouse or child shall be reapportioned to those,
0410 among the surviving legal spouse and dependent children, who
0411 remain eligible to receive compensation under this section.

0412 (h) Notwithstanding any other provision in this section to the
0413 contrary, the maximum amount of compensation benefits pay-
0414 able under this section to any and all dependents by the em-
0415 ployer shall not exceed a total amount of ~~\$100,000~~ \$200,000 and
0416 when such total amount has been paid the liability of the em-

0417 ployer for any further compensation under this section to de-
0418 pendents, other than minor children of the employee, shall cease
0419 except that the payment of compensation under this section to
0420 any minor child of the employee shall continue for the period of
0421 the child's minority at the weekly rate in effect when the em-
0422 ployer's liability is otherwise terminated under this subsection
0423 and shall not be subject to termination under this subsection
0424 until such child becomes 18 years of age.

0425 (i) If the employee does not leave any dependents who are
0426 citizens of or residing at the time of the accident in the United
0427 States, the amount of compensation shall not exceed in any case
0428 the sum of \$750.

0429 (j) A surviving spouse shall submit an annual statement to the
0430 employer and to the director, in such form and containing such
0431 information relating to eligibility for compensation under this
0432 section as may be required by rules and regulations of the
0433 director. If such spouse fails to submit such an annual statement,
0434 the employer may notify the director of such failure and the
0435 director shall notify such spouse of such failure by certified mail
0436 with return receipt. If such spouse fails to submit the annual
0437 statement or fails to reasonably provide the required information
0438 within 30 days after receipt of the notice from the director, all
0439 compensation benefits paid under this section to such spouse
0440 shall be suspended until such statement is submitted in proper
0441 form to the employer and the director.

0442 Sec. 5. K.S.A. 44-510c is hereby amended to read as follows:
0443 44-510c. Where death does not result from the injury, compen-
0444 sation shall be paid as provided in K.S.A. 44-510 and amend-
0445 ments thereto and as follows:

0446 (a) (1) Where permanent total disability results from the in-
0447 jury, weekly payments shall be made during the period of per-
0448 manent total disability in a sum equal to ~~sixty-six and two-thirds~~
0449 ~~percent (66²/₃%)~~ 66²/₃% of the average gross weekly wage of the
0450 injured employee, computed as provided in K.S.A. 44-511; and
0451 amendments thereto, but in no case less than ~~twenty-five dollars~~
0452 ~~(\$25)~~ \$25 per week nor, prior to July 1, 1980, more than the dollar
0453 amount nearest ~~seventy-two percent (72%)~~ of the state's average

0454 weekly wage nor, on and after July 1, 1980, more than the dollar
0455 amount nearest ~~seventy-five percent (75%)~~ to 75% of the state's
0456 average weekly wage, determined as provided in K.S.A. 44-511
0457 and amendments thereto, per week. The payment of compensa-
0458 tion for permanent total disability shall continue for the duration
0459 of such disability, subject to review and modification as provided
0460 in K.S.A. 44-528 and amendments thereto.

0461 (2) Permanent total disability exists when the employee, on
0462 account of the injury, has been rendered completely and perma-
0463 nently incapable of engaging in any type of substantial and
0464 gainful employment. Loss of both eyes, both hands, both arms,
0465 both feet, or both legs, or any combination thereof, shall, in the
0466 absence of proof to the contrary, constitute a permanent total
0467 disability. Substantially total paralysis, or incurable imbecility or
0468 insanity, resulting from injury independent of all other causes,
0469 shall constitute permanent total disability. In all other cases
0470 permanent total disability shall be determined in accordance
0471 with the facts.

0472 (b) (1) Where temporary total disability results from the in-
0473 jury, no compensation shall be paid during the first week of
0474 disability, except that provided in K.S.A. 44-510 and amend-
0475 ments thereto, unless the temporary total disability exists for
0476 three ~~(3)~~ consecutive weeks, in which case compensation shall
0477 be paid for the first week of such disability. Thereafter weekly
0478 payments shall be made during such temporary total disability,
0479 in a sum equal to ~~sixty-six and two-thirds percent (66²/₃%)~~ 66²/₃%
0480 of the average gross weekly wage of the injured employee,
0481 computed as provided in K.S.A. 44-511 and amendments thereto,
0482 but in no case less than ~~twenty-five dollars (\$25)~~ \$25 per week
0483 nor, prior to July 1, 1980, more than the dollar amount nearest
0484 ~~seventy-two percent (72%)~~ of the state's average weekly wage or,
0485 on and after July 1, 1980, more than the dollar amount nearest
0486 ~~seventy-five percent (75%)~~ to 75% of the state's average weekly
0487 wage, determined as provided in K.S.A. 44-511 and amendments
0488 thereto, per week. The payment of compensation for temporary
0489 total disability shall continue for the duration of any such dis-
0490 ability, subject to review and modification as provided in K.S.A.

75%

0491 44-528 and amendments thereto.

0492 (2) Temporary total disability exists when the employee, on
0493 account of the injury, has been rendered completely and tempo-
0494 rarily incapable of engaging in any type of substantial and
0495 gainful employment.

0496 (3) Where no award has been entered by the director, a
0497 return by the employee to any type of substantial and gainful
0498 employment; or a release by a treating physician or examining
0499 physician, who is not regularly employed or retained by the
0500 employer, to return to any such employment, shall suspend the
0501 employee's right to the payment of temporary total disability
0502 compensation, but shall not affect any right the employee may
0503 have to compensation for partial disability in accordance with
0504 K.S.A. 44-510d and 44-510e; and amendments thereto.

0505 (c) When any permanent total disability or temporary total
0506 disability is followed by partial disability, compensation shall be
0507 paid as provided in K.S.A. 44-510d and 44-510e; and amend-
0508 ments thereto.

0509 Sec. 6. K.S.A. 44-510d is hereby amended to read as follows:
0510 44-510d. (a) Where disability, partial in character but permanent
0511 in quality, results from the injury, the injured employee shall be
0512 entitled to the compensation provided in K.S.A. 44-510 and
0513 amendments thereto, but shall not be entitled to any other or
0514 further compensation for or during the first week following the
0515 injury unless such disability exists for three (3) consecutive
0516 weeks, in which event compensation shall be paid for the first
0517 week. Thereafter compensation shall be paid for temporary total
0518 loss of use and as provided in the following schedule, ~~sixty-six~~
0519 ~~and two-thirds percent (66²/₃%)~~ 66²/₃% of the average gross
0520 weekl' wages to be computed as provided in K.S.A. 44-511 and
0521 amendments thereto, and *except that in no case shall* the weekly
0522 compensation ~~in no case to~~ be more than the maximum as
0523 provided for in K.S.A. 44-510c and amendments thereto. If there
0524 is an award of permanent disability as a result of the injury there
0525 shall be a presumption that disability existed immediately after
0526 the injury and compensation is to be paid for not to exceed the
0527 number of weeks allowed in the following schedule:

- 0528 (1) For loss of a thumb, ~~sixty (60)~~ 60 weeks.
- 0529 (2) For the loss of a first finger, commonly called the index
0530 finger, ~~thirty-seven (37)~~ 37 weeks.
- 0531 (3) For the loss of a second finger, ~~thirty (30)~~ 30 weeks.
- 0532 (4) For the loss of a third finger, ~~twenty (20)~~ 20 weeks.
- 0533 (5) For the loss of a fourth finger, commonly called the little
0534 finger, ~~fifteen (15)~~ 15 weeks.
- 0535 (6) Loss of the first phalange of the thumb or of any finger
0536 shall be considered to be equal to the loss of ~~one-half (1/2)~~ 1/2 of
0537 such thumb or finger, and the compensation shall be ~~one-half~~
(1/2) 1/2 of the amount specified above. The loss of the first
0539 phalange and any part of the second phalange of any finger,
0540 which includes the loss of any part of the bone of such second
0541 phalange, shall be considered to be equal to the loss of ~~two-~~
0542 ~~thirds (2/3)~~ 2/3 of such finger and the compensation shall be
0543 ~~two-thirds (2/3)~~ 2/3 of the amount specified above. The loss of
0544 the first phalange and any part of the second phalange of a thumb
0545 which includes the loss of any part of the bone of such second
0546 phalange, shall be considered to be equal to the loss of the entire
0547 thumb. The loss of the first and second phalanges and any part of
0548 the third proximal phalange of any finger, shall be considered as
0549 the loss of the entire finger. Amputation through the joint shall
0550 be considered a loss to the next higher schedule.
- 0551 (7) For the loss of a great toe, ~~thirty (30)~~ 30 weeks.
- 0552 (8) For the loss of any toe other than the great toe, ~~ten (10)~~ 10
0553 weeks.
- 0554 (9) The loss of the first phalange of any toe shall be consid-
0555 ered to be equal to the loss of ~~one-half (1/2)~~ 1/2 of such toe and whe
0556 compensation shall be ~~one-half (1/2)~~ 1/2 of the amount above
0557 specified.
- 0558 (10) The loss of more than one phalange of a toe shall be
0559 considered to be equal to the loss of the entire toe.
- 0560 (11) For the loss of a hand, ~~one hundred fifty (150)~~ 150 weeks.
- 0561 (12) For the loss of a forearm, ~~two hundred (200)~~ 200 weeks.
- 0562 (13) For the loss of an arm, ~~two hundred ten (210)~~ 210 weeks.
- 0563 (14) For the loss of a foot, ~~one hundred twenty-five (125)~~ 125
0564 weeks.

0565 (15) For the loss of a lower leg, ~~one hundred ninety (190)~~ 190
0566 weeks.

0567 (16) For the loss of a leg, ~~two hundred (200)~~ 200 weeks.

0568 (17) For the loss of an eye, or the complete loss of the sight
0569 thereof, ~~one hundred twenty (120)~~ 120 weeks.

0570 (18) Amputation or severance below the wrist shall be con-
0571 sidered as the loss of a hand. Amputation at the wrist and below
0572 the elbow shall be considered as the loss of the forearm. Ampu-
0573 tation at or above the elbow shall be considered loss of the arm.
0574 Amputation below the ankle shall be considered loss of the foot.
0575 Amputation at the ankle and below the knee shall be considered
0576 as loss of the lower leg. Amputation at or above the knee shall be
0577 considered as loss of the leg.

0578 (19) For the complete loss of hearing of both ears, ~~one hun-~~
0579 ~~dred ten (110)~~ 110 weeks.

0580 (20) For the complete loss of hearing of one ear, ~~thirty (30)~~ 30
0581 weeks.

0582 (21) Permanent loss of the use of a finger, thumb, hand, arm,
0583 forearm, toe, foot, leg or lower leg or the permanent loss of the
0584 sight of an eye or the hearing of an ear, shall be equivalent to the
0585 loss thereof. For the permanent partial loss of the use of a finger,
0586 thumb, hand, arm, toe, foot or leg, or the sight of an eye or the
0587 hearing of an ear, compensation shall be paid as provided for in
0588 K.S.A. 44-510c and amendments thereto, per week during that
0589 proportion of the number of weeks in the foregoing schedule
0590 provided for the loss of such finger, thumb, hand, arm, toe, foot or
0591 leg, or the sight of an eye or the hearing of an ear, which partial
0592 loss thereof bears to the total loss of a finger, thumb, hand, arm,
0593 toe, foot or leg, or the sight of an eye or the hearing of an ear; but
0594 in no event shall the compensation payable hereunder for such
0595 partial loss exceed the compensation payable under the schedule
0596 for the total loss of such finger, thumb, hand, arm, toe, foot or leg,
0597 or the sight of an eye or the hearing of an ear, exclusive of the
0598 healing period.

0599 (22) For traumatic hernia, compensation shall be limited to
0600 the compensation under K.S.A. 44-510 and amendments thereto,
0601 compensation for temporary total disability during such period of

0602 time as such employee is actually unable to work on account of
 0603 such hernia, and, in the event such hernia is inoperable, weekly
 0604 compensation during ~~twelve (12)~~ 12 weeks, except that, in the
 0605 event that such hernia is operable, the unreasonable refusal of
 0606 the employee to submit to an operation for surgical repair of such
 0607 hernia shall deprive such employee of any benefits under the
 0608 ~~workmen's workers~~ workers compensation act.

0609 ~~(23) Repetitive use conditions occurring in opposite extre-~~
 0610 ~~mities, whether occurring simultaneously or otherwise, shall be~~
 0611 ~~compensated by allowing the compensation due for each such~~
 0612 ~~extremity under this section and additional compensation not to~~
 0613 ~~exceed 20% of the total period allowed for both extremities.~~

0614 (b) Whenever the employee is entitled to compensation for a
 0615 specific injury under the foregoing schedule, the same shall be
 0616 exclusive of all other compensation except the benefits provided
 0617 in K.S.A. 44-510 and amendments thereto, and no additional
 0618 compensation shall be allowable or payable for either temporary
 0619 or permanent disability, except that the director may, in proper
 0620 cases, allow additional compensation during the actual healing
 0621 period, such period not to be more than ~~ten percent (10%)~~ 10% of
 0622 the total period allowed for the scheduled injury in question nor
 0623 in any event for longer than ~~fifteen (15)~~ 15 weeks. The return of
 0624 the employee to his or her *the employee's* usual occupation shall
 0625 terminate the healing period.

0626 Sec. 7. K.S.A. 44-510e is hereby amended to read as follows:
 0627 44-510e. (a) ~~Should~~ If the employer and the employee ~~be~~ *are*
 0628 unable to agree upon the amount of compensation to be paid in
 0629 the case of injury not covered by the schedule in K.S.A. ~~510d~~, as
 0630 amended ~~44-510d and amendments thereto~~, the amount of com-
 0631 pensation shall be settled according to the provisions of the
 0632 ~~workmen's workers~~ compensation act as in other cases of dis-
 0633 agreement: *Provided, except that in case of temporary or perma-*
 0634 *nent partial general disability not covered by such schedule, the*
 0635 *workman employee* shall receive weekly compensation as deter-
 0636 mined in this subsection (a) during such period of temporary or
 0637 permanent partial general disability not exceeding a maximum of
 0638 ~~four hundred fifteen (415)~~ 415 weeks. Weekly compensation for

(23) Whenever the employee is entitled to compensation for repetitive use conditions occurring in opposite extremities, whether occurring simultaneously or otherwise, the compensation shall be computed as separate scheduled injuries to each such extremity and the percentage of loss of use thereof shall be increased by 20% of the determined loss of use to each such extremity.

0639 temporary partial general disability shall be ~~sixty-six~~ and two-
 0640 thirds percent (~~66²/₃%~~) 66²/₃% of the difference between the
 0641 average gross weekly wage that the workman employee was
 0642 earning prior to such injury as provided in the workmen's
 0643 workers compensation act and the amount he the employee is
 0644 actually earning after such injury in any type of employment,
 0645 except that in no case shall such weekly compensation in no case
 0646 to exceed the maximum as provided for in K.S.A. 44-510c, as
 0647 amended and amendments thereto. Permanent partial general
 0648 disability exists when the workman employee is disabled in a
 0649 manner which is partial in character and permanent in quality
 0650 and which is not covered by the schedule in K.S.A. 44-510d, as
 0651 amended and amendments thereto. ~~The extent of permanent~~
 0652 ~~partial general disability shall be the extent, expressed as a~~
 0653 ~~percentage, to which the ability of the workman to engage in~~
 0654 ~~work of the same type and character that he was performing at~~
 0655 ~~the time of his injury, has been reduced employee to return to~~
 0656 ~~the open labor market has been reduced, taking into considera-~~
 0657 ~~tion the employee's education, training, experience, age and~~
 0658 ~~capacity for rehabilitation, except that in any event the extent of~~
 0659 ~~permanent partial general disability shall not be less than~~
 0660 ~~percentage of functional disability which shall be the percent-~~
 0661 ~~age of permanent partial impairment of function as determined~~
 0662 ~~by objective and competent medical evidence. There shall be a~~
 0663 ~~conclusive presumption that the employee has no work disabil-~~
 0664 ~~ity if the employee returns to any work for wages equal to or~~
 0665 ~~more than the average gross weekly wage that the employee was~~
 0666 ~~earning prior to the injury.]~~ The amount of weekly compensation
 0667 for permanent partial general disability shall be determined: (1)
 0668 By multiplying the average gross weekly wage of the workman
 0669 worker prior to such injury by the percentage of permanent
 0670 partial general disability as determined under this subsection
 0671 (a); and (2) by then multiplying the result so obtained by ~~sixty-six~~
 0672 and two-thirds percent (~~66²/₃%~~) 66²/₃%. The amount of weekly
 0673 compensation for permanent partial general disability so deter-
 0674 mined shall in no case exceed the maximum as provided for in
 0675 K.S.A. 44-510e, as amended ~~50% of the state's average weekly~~

The extent of permanent partial general disability shall be the extent, expressed as a percentage, to which the employee has a work disability, except that in no case shall the extent of permanent partial general disability be less than the extent of functional impairment. Work disability is the extent, expressed as a percentage, to which the ability of the employee has been reduced to perform work of a type and character that the worker was able to perform at the time of injury, taking into consideration the employee's education, training, experience, age and capacity for rehabilitation. Functional impairment is the extent, expressed as a percentage, of the loss of a part of the total physiological capabilities of the human body, as established by objective and competent medical evidence. There shall be a presumption that the employee has no work disability if the employee returns to any work for wages equal to or more than the average gross weekly wage that the employee was earning prior to the injury.

0676 ~~Wage, determined as provided in K.S.A. 44-511~~ and amendments
0677 thereto. If there is an award of permanent disability as a result of
0678 the compensable injury, there shall be a presumption that dis-
0679 ability existed immediately after such injury. In any case of
0680 permanent partial disability under this section, the workman
0681 worker shall be paid compensation for not to exceed four hun-
0682 dred fifteen (415) 415 weeks following the date of such injury,
0683 subject to review and modification as provided in K.S.A. 44-528;
0684 as amended and amendments thereto.

0685 (b) If a workman an employee has received an injury for
0686 which compensation is being paid him, and his the employee's
0687 death is caused by other and independent causes, any payment
0688 of compensation already due him the employee at the time of his
0689 death and then unpaid shall be paid to his the employee's
0690 dependents directly or to his the employee's legal representa-
0691 tives if he the employee left no dependent, but the liability of the
0692 employer for the payments of compensation not yet due at the
0693 time of the death of such workman employee shall cease and be
0694 abrogated by his the employee's death.

0695 (c) The total amount of compensation that may be allowed or
0696 awarded an injured workman employee for all injuries received
0697 in any one accident shall in no event exceed the compensation
0698 which would be payable under the workmen's workers com-
0699 pensation act for permanent total disability resulting from such
0700 accident.

0701 (d) Where a minor employee or his a minor employee's de-
0702 pendents are entitled to compensation under the workmen's
0703 workers compensation act, such compensation shall be exclusive
0704 of all other remedies or causes of action for such injury or death,
0705 and no claim or cause of action against said the employer shall
0706 inure or accrue to or exist in favor of the parent or parents of such
0707 minor employee on account of any damage resulting to such
0708 parent or parents on account of the loss of earnings or loss of
0709 service of such minor employee.

0710 (e) In any case of injury to or death of a female employee,
0711 where the said female employee or her dependents are entitled
0712 to compensation under the workmen's workers compensation

the maximum as provided for in
K.S.A. 44-510c

0713 act, such compensation shall be exclusive of all other remedies
0714 or causes of action for such injury or death, and no claim or action
0715 shall inure, accrue to or exist in favor of the surviving husband or
0716 any relative or next of kin of such female employee against such
0717 employer on account of any damage resulting to such surviving
0718 husband or any relative or next of kin on account of the loss of
0719 earnings, services, or society of such female employee or on any
0720 other account resulting from or growing out of the injury or death
0721 of such female employee.

0722 Sec. 8. K.S.A. 44-510f is hereby amended to read as follows:
0723 44-510f. (a) Notwithstanding any provision of the ~~workmen's~~
0724 ~~workers~~ compensation act to the contrary, the maximum com-
0725 pensation benefits payable by an employer shall not exceed the
0726 following:

0727 (1) For permanent total disability, including temporary total,
0728 temporary partial, permanent partial and temporary partial dis-
0729 ability payments paid or due, ~~one hundred thousand dollars~~
0730 ~~(\$100,000)~~ \$200,000 for an injury or any aggravation thereof.

0731 (2) For temporary total disability, including any prior per-
0732 manent total, permanent partial or temporary partial disability
0733 payments paid or due, ~~seventy-five thousand dollars (\$75,000)~~
0734 \$75,000 for an injury or any aggravation thereof.

0735 (3) For permanent or temporary partial disability, including
0 any prior temporary total, permanent total, temporary partial, or
0737 permanent partial disability payments paid or due, ~~seventy-five~~
0738 ~~thousand dollars (\$75,000)~~ \$75,000 for an injury or any aggrava-
0739 tion thereof.

0740 (b) If an employer shall voluntarily pay unearned wages to an
0741 employee in addition to and in excess of any amount of disability
0742 benefits to which the employee is entitled under the ~~workmen's~~
0743 ~~workers~~ compensation act, the excess amount paid shall be
0744 allowed as a credit to the employer in any final lump-sum
0745 settlement, or may be withheld from the employee's wages in
0746 weekly amounts the same as the weekly amount or amounts paid
0747 in excess of compensation due, but not until and unless the
0748 employee's average gross weekly wage for the calendar year
0749 exceeds ~~one hundred twenty-five percent (125%)~~ 125% of the

0750 state's average weekly wage, determined as provided in K.S.A.
0751 44-511 and amendments thereto. The provisions of this subsec-
0752 tion shall not apply to any employer who pays any such unearned
0753 wages to an employee pursuant to an agreement between the
0754 employer and employee or labor organization to which the
0755 employee belongs.

0756 Sec. 9. K.S.A. 44-511 is hereby amended to read as follows:
0757 44-511. (a) As used in this section:

0758 (1) The term "money" shall be construed to mean the gross
0759 remuneration, on an hourly, output, salary, commission or other
0760 basis, at which the service rendered is recompensed in money by
0761 the employer, but it shall not include any additional compensa-
0762 tion, as defined in this section, any remuneration in any medium
0763 other than cash, or any other compensation or benefits received
0764 by the employee from the employer or any other source.

0765 (2) The term "additional compensation" shall include and
0766 mean only the following: (A) Gratuities in cash received by the
0767 employee from persons other than the employer for services
0768 rendered in the course of the employee's employment; (B) any
0769 cash bonuses paid by the employer within one year prior to the
0770 date of the accident, for which the average weekly value shall be
0771 determined by averaging all such bonuses over the period of
0772 time employed prior to the date of the accident, not to exceed 52
0773 weeks; (C) board and lodging when furnished by the employer
0774 as part of the wages, which shall be valued at a maximum of \$25
0775 per week for board and lodging combined, unless the value has
0776 been fixed otherwise by the employer and employee prior to the
0777 date of the accident, or unless a higher weekly value is proved;
0778 (D) the average weekly cash value of remuneration for services
0779 in any medium other than cash where such remuneration is in
0780 lieu of money, which shall be valued in terms of the average
0781 weekly cost to the employer of such remuneration for the em-
0782 ployee; and (E) employer-paid life insurance, health and acci-
0783 dent insurance and employer contributions to pension and profit
0784 sharing plans. *In no case shall additional compensation include*
0785 *any amounts of employer taxes paid by the employer under the*
0786 *old-age and survivors insurance system embodied in the federal*

0787 *social security system*. Additional compensation shall not in-
0788 clude the value of such remuneration until and unless such
0789 remuneration is discontinued. If such remuneration is discon-
0790 tinued subsequent to a computation of average gross weekly
0791 wages under this section, there shall be a recomputation to
0792 include such discontinued remuneration.

0793 (3) The term "wage" shall be construed to mean the total of
0794 the money and any additional compensation which the em-
0795 ployee receives for services rendered for the employer in whose
0796 employment the employee sustains an injury by accident arising
0797 out of and in the course of such employment.

0798 (4) The term "part-time hourly employee" shall mean and
0799 include any employee paid on an hourly basis: (A) Who by
0800 custom and practice or under the verbal or written employment
0801 contract in force at the time of the accident is employed to work,
0802 agrees to work, or is expected to work on a regular basis less than
0803 40 hours per week; and (B) who at the time of the accident is
0804 working in any type of trade or employment where there is no
0805 customary number of hours constituting an ordinary day in the
0806 character of the work involved or performed by the employee.

0807 (5) The term "full-time hourly employee" shall mean and
0808 include only those employees paid on an hourly basis who are
0809 not part-time hourly employees, as defined in this section, and
0810 who are employed in any trade or employment where the cus-
0811 tomary number of hours constituting an ordinary working week
0812 is 40 or more hours per week, or those employees who are
0813 employed in any trade or employment where such employees
0814 are considered to be full-time employees by the industrial cus-
0815 toms of such trade or employment, regardless of the number of
0816 hours worked per day or per week.

0817 (b) The employee's average gross weekly wage for the pur-
0818 pose of computing any compensation benefits provided by the
0819 *workmen's workers* compensation act shall be determined as
0820 follows:

0821 (1) If at the time of the accident the money rate is fixed by the
0822 year, the average gross weekly wage shall be the yearly rate so
0823 fixed divided by 52, plus the average weekly value of any

0824 additional compensation and the value of the employee's
0825 average weekly overtime as computed in paragraph (4) of this
0826 subsection.

0827 (2) If at the time of the accident the money rate is fixed by the
0828 month, the average gross weekly wage shall be the monthly rate
0829 so fixed multiplied by 12 and divided by 52, plus the average
0830 weekly value of any additional compensation and the value of
0831 the employee's average weekly overtime computed as provided
0832 in paragraph (4) of this subsection.

0833 (3) If at the time of the accident, the money rate is fixed by
0834 the week, the amount so fixed, plus the average weekly value of
0835 any additional compensation and the value of the employee's
0836 average weekly overtime as computed in paragraph (4) of this
0837 subsection, shall be the average gross weekly wage.

0838 (4) If at the time of the accident the employee's money rate
0839 was fixed by the hour, the employee's average gross weekly
0840 wage shall be determined as follows: (A) If the employee was a
0841 part-time hourly employee, as defined in this section, the
0842 average gross weekly wage shall be determined in the same
0843 manner as provided in paragraph (5) of this subsection; (B) if the
0844 employee is a full-time hourly employee, as defined in this
0845 section, the average gross weekly wage shall be determined as
0846 follows: (i) A daily money rate shall first be found by multiplying
0847 the straight-time hourly rate applicable at the time of the ac-
0848 cident, by the customary number of working hours constituting
0849 an ordinary day in the character of work involved; (ii) the
0850 straight-time weekly rate shall be found by multiplying the daily
0851 money rate by the number of days and half days that the em-
0852 ployee usually and regularly worked, or was expected to work,
0853 but 40 hours shall constitute the minimum hours for computing
0854 the wage of a full-time hourly employee; (iii) the average weekly
0855 overtime of the employee shall be the total amount earned by the
0856 employee in excess of the amount of straight-time money earned
0857 by the employee during the 26 calendar weeks immediately
0858 preceding the date of the accident, or during the actual number
0859 of such weeks the employee was employed if less than 26 weeks,
0860 divided by the number of such weeks; and (iv) the average gross

0861 weekly wage of a full-time hourly employee shall be the total of
0862 the straight-time weekly rate, the average weekly overtime and
0863 the weekly average of any additional compensation.

0864 (5) If at the time of the accident the money rate is fixed by the
0865 output of the employee, on a commission or percentage basis, on
0866 a flat-rate basis for performance of a specified job, or on any other
0867 basis where the money rate is not fixed by the week, month, year
0868 or hour, and if the employee has been employed by the employer
0869 at least one calendar week immediately preceding the date of the
0870 accident, the average gross weekly wage shall be the gross
0871 amount of money earned during the number of calendar weeks
0872 so employed, up to a maximum of 26 calendar weeks immedi-
0873 ately preceding the date of the accident, divided by the number
0874 of weeks employed, or by 26 as the case may be, plus the average
0875 weekly value of any additional compensation and the value of
0876 the employee's average weekly overtime computed as provided
0877 in paragraph (4) of this subsection. If the employee had been in
0878 the employment of the employer less than one calendar week
0879 immediately preceding the accident, the average gross weekly
0880 wage shall be determined by the director based upon all of the
0881 evidence and circumstances, including the usual wage for simi-
0882 lar services paid by the same employer, or if the employer has no
0883 employees performing similar services, the usual wage paid for
0884 similar services by other employers. The average gross weekly
0885 wage so determined shall not exceed the actual average gross
0886 weekly wage the employee was reasonably expected to earn in
0887 the employee's specific employment, including the average
0888 weekly value of any additional compensation and the value of
0889 the employee's average weekly overtime computed as provided
0890 in paragraph (4) of this subsection. In making any computations
0891 under this paragraph (5), workweeks during which the employee
0892 was on vacation, leave of absence, sick leave or was absent the
0893 entire workweek because of illness or injury shall not be con-
0894 sidered.

0895 (6) (A) The average gross weekly wage of a person serving on
0896 a volunteer basis as a duly authorized law enforcement officer,
0897 an ambulance attendant, mobile intensive care technician, fire-

0898 man or fire fighter, or any other volunteer under the workmen's
0899 workers compensation act, who receives no wages for such
0900 services, or who receives wages which are substantially less than
0901 the usual wages paid for such services by comparable employers
0902 to employees who are not volunteers, shall be computed on the
0903 basis of the usual wages paid by the employer for such services
0904 to employees who are not volunteers, or, if the employer has no
0905 employees performing such services for wages who are not
0906 volunteers, the average gross weekly wage shall be computed on
0907 the basis of the usual wages paid for such services by comparable
employers to employees who are not volunteers.

0909 (B) The average gross weekly wage of any person performing
0910 community service work shall be deemed to be \$37.50.

0911 (7) The average gross weekly wage of an employee who
0912 sustains an injury by accident arising out of and in the course of
0913 multiple employment, in which such employee performs the
0914 same or a very similar type of work on a part-time basis for each
0915 of two or more employers, shall be the total average gross weekly
0916 wage of such employee paid by all the employers in such
0917 multiple employment. The total average gross weekly wage of
0918 such employee shall be the total amount of the individual
0919 average gross weekly wage determinations under this section for
0920 each individual employment of such multiple employment.

0921 (8) In determining an employee's average gross weekly wage
0922 with respect to the employer against whom claim for compensa-
0923 tion is made, no money or additional compensation paid to or
0924 received by the employee from such employer, or from any
0925 source other than from such employer, shall be included as
0926 wages, except as provided in this section. No wages, other
0927 compensation or benefits of any type, except as provided in this
0928 section, shall be considered or included in determining the
0929 employee's average gross weekly wage.

0930 (c) In any case, the average yearly wage shall be found by
0931 multiplying the average gross weekly wage, as determined in
0932 subsection (b), by 52.

0933 (d) The state's average weekly wage for any year shall be the
0934 average weekly wage paid to employees in insured work subject

0010 to Kansas employment security law as determined annually by
0011 the secretary of human resources as provided in K.S.A. 44-704
0012 and amendments thereto.

0013 (e) Members of a labor union or other association who per-
0014 form services in behalf of the labor union or other association and
0015 who are not paid as full-time employees of the labor union or
0016 other association and who are injured or suffer occupational
0017 disease in the course of the performance of duties in behalf of the
0018 labor union or other association shall recover compensation
0019 benefits under the ~~workmen's~~ workers compensation act from
0020 the labor union or other association if the labor union or other
0021 association files an election with the director to bring its mem-
0022 bers who perform such services under the coverage of the work-
0023 men's workers compensation act.

0024 The average weekly wage for the purpose of this subsection
0025 shall be based on what the employee would earn in the em-
0026 ployee's general occupation if at the time of the injury the
0027 employee had been performing work in the employee's general
0028 occupation. The insurance coverage shall be furnished by the
0029 labor union or other association.

0030 Sec. 10. K.S.A. 44-512a is hereby amended to read as fol-
0031 lows: 44-512a. (a) In the event any compensation, including
0032 medical compensation, which has been awarded under the
0033 ~~workmen's~~ workers compensation act, is not paid when due to
0034 the person, firm or corporation entitled thereto, the ~~workman~~
0035 worker shall be entitled to a civil penalty, to be set by the
0036 director and assessed against the employer or insurance carrier
0037 liable for such compensation, *in an amount* of not more than one
0038 hundred dollars (~~\$100~~) \$100 per week for each week any dis-
0039 ability compensation is past due, and in the sum of ~~twenty-five~~
0040 dollars (~~\$25~~) \$25 for each past due medical bill, if: (1) Service of
0041 written demand for payment, setting forth with particularity the
0042 items of disability and medical compensation claimed to be
0043 unpaid and past due, has been made personally or by registered
0044 mail on the employer or insurance carrier liable for such com-
0045 pensation, and its attorney of record; and (2) payment of such
0046 demand is thereafter refused or is not made within ~~twenty~~ 20

0047 days from the date of service of such demand.

0048 (b) After the service of such written demand, if the payment
0049 of disability compensation or medical compensation set forth in
0050 the written demand is not made within ~~twenty (20)~~ 20 days from
0051 the date of service of such written demand, plus any civil
0052 penalty, as provided in subsection (a) of this section, if such
0053 compensation was in fact past due, then all past due compensa-
0054 tion and any such penalties shall become immediately due and
0055 payable. *Service of written demand shall be required only once*
0056 *after the award. Subsequent failures to pay compensation, in-*
0057 *cluding medical compensation, shall entitle the worker to apply*
0058 *for the civil penalty without demand.* The ~~workman~~ worker may
0059 maintain an action in the district court which would have juris-
0060 diction over an appeal of an award of compensation to the
0061 claimant, of the county where the cause of action arose for the
0062 collection of such past due disability compensation and medical
0063 compensation, any civil penalties due under this section; and the
0064 reasonable attorneys' attorney fees incurred in connection with
0065 the action.

0066 (c) The remedies of execution, attachment, garnishment or
0067 any other remedy or procedure for the collection of a debt now
0068 provided by the laws of this state shall apply to such action and
0069 also to all judgments entered under the provisions of K.S.A.
0070 () 44-529; *Provided and amendments thereto, except that no ex-*
0071 *emption granted by any law shall apply except the homestead*
0072 *exemption granted and guaranteed by the constitution of this*
0073 *state.*

0074 Sec. 11. K.S.A. 44-519 is hereby amended to read as follows:
0075 44-519. No report of any examination of any employee by a
0076 physician or surgeon or *other health care provider*, as herein-
0077 *before in this act provided for in the workers compensation act,*
0078 nor any certificate issued or given by the physician or surgeon or
0079 *other health care provider* making such examination, shall be
0080 competent evidence in any proceeding for the determining or
0081 collection of compensation unless supported by the testimony of
0082 such physician or surgeon or *other health care provider*, if this
0083 testimony is admissible, nor *shall it be* competent evidence in

0084 any case where testimony of such physician or surgeon or other
0085 health care provider is not admissible. *The statement of charges*
0086 *of a physician or surgeon or other health care provider shall be*
0087 *admissible into evidence if supported by the foundation testi-*
0088 *mony of the claimant or such health care provider subject to*
0089 *objections as to whether the services rendered or a portion*
0090 *thereof or the charges therefor were reasonable and necessary to*
0091 *cure or relieve the employee from the effects of the injury.*
0092 *Objections to such statements of charges shall be specific. If it is*
0093 *found by the director that such services or charges, or any*
0094 *portion thereof, were not reasonable and necessary, the director*
0095 *may assess costs and attorney fees to the employee or the*
0096 *employee's attorney, or both, as the director deems appropriate*
0097 *under the circumstances. If it is found by the director that the*
0098 *objection was not made in good faith, the cost of proving the*
0099 *reasonableness and necessity of such services or charges shall be*
0100 *assessed to the objecting party.*

0101 Sec. 12. K.S.A. 44-528 is hereby amended to read as follows:
0102 44-528. (a) Any award or modification thereof agreed upon by the
0103 parties, except lump-sum settlements approved by the director
0104 or administrative law judge, whether the award provides for
0105 compensation into the future or whether it does not, may be
0106 reviewed by the director for good cause shown upon the appli-
0107 cation of the employee, employer, dependent, insurance carrier
0108 or any other interested party. In connection with such review the
0109 director may appoint one ~~(1)~~ or two ~~(2)~~ physicians to examine the
0110 employee and report to the director. The director shall hear all
0111 competent evidence offered and if the director finds that the
0112 award has been obtained by fraud or undue influence, that the
0113 award was made without authority or as a result of serious
0114 misconduct, that the award is excessive or inadequate or that the
0115 incapacity or disability of the employee has increased or dimin-
0116 ished, the director may modify such award, or reinstate a prior
0117 award, upon such terms as may be just, by increasing or dimin-
0118 ishing the compensation subject to the limitations provided in
0119 the ~~workmen's~~ workers compensation act.

0120 (b) If the director shall find ~~finds~~ that the employee has

0121 returned to work for the same employer in whose employ the
0122 employee was injured or for another employer and *is earning or*
0123 *is capable of earning the same or higher wages than the em-*
0124 *ployee did at the time of the accident, or is capable of gaining an*
0125 *income from any trade or employment which is equal to or*
0126 *greater than the wages the employee was earning at the time of*
0127 *the accident, or shall find finds that the employee has absented*
0128 *and continues to be absent so that a reasonable examination*
0129 *cannot be made of the employee by a physician selected by the*
0130 *employer, or has departed beyond the boundaries of the United*
0131 *States, the director may modify the award and reduce compen-*
0132 *sation or may cancel the award and end the compensation.*

0133 (c) The number of reviews under this section shall be limited
0134 pursuant to rules and regulations adopted by the director to
0135 avoid abuse.

0136 Sec. 13. K.S.A. 44-534a is hereby amended to read as fol-
0137 lows: 44-534a. (a) After filing an application for a hearing pursu-
0138 ant to K.S.A. 44-534 and amendments thereto, the employee may
0139 make application for a preliminary hearing, in such form as the
0140 director may require by rules and regulations, on the issues of
0141 the furnishing of medical treatment and the payment of tempo-
0142 rary total disability compensation. At least seven days prior to
0143 filing an application for a preliminary hearing, the employee
0144 shall notify the employer of the employee's intent to file such an
0145 application and shall confirm such notice by letter. Upon receipt
0146 of an application for such a preliminary hearing, the director
0147 shall give seven days' written notice by mail to the employer of
0148 the date set for such hearing. Such preliminary hearing shall be
0149 summary in nature and shall be held by the director or an
0150 administrative law judge in any county designated by the direc-
0151 tor or administrative law judge, and the director or administra-
0152 tive law judge shall exercise such powers as are provided for the
0153 conduct of full hearings on claims under the workmen's com-
0154 pensation act. Upon a preliminary finding that the injury to the
0155 employee is compensable and in accordance with the facts
0156 presented at such preliminary hearing, the director or adminis-
0157 trative law judge may make a preliminary award of medical and

0158 temporary total disability compensation to be in effect pending
 0159 the conclusion of a full hearing on the claim. The decision in
 0160 such preliminary hearing shall be rendered within five days of
 0161 the conclusion of such hearing. No such preliminary findings or
 0162 preliminary awards shall be appealable by any party to the
 0163 proceedings, and the same shall not be binding in a full hearing
 0164 on the claim, but shall be subject to a full presentation of the
 0165 facts.

0166 (b) If compensation in the form of medical benefits or tem-
 0167 porary total disability benefits has been paid by the employer or
 0168 the employer's insurance carrier *either voluntarily or pursuant*
 0169 to a preliminary award entered under this section and, *upon a*
 0170 *full hearing on the claim*, the amount of compensation ~~so~~
 0171 ~~awarded is reduced or~~ *to which the employee is entitled is found*
 0172 *to be less than the amount of compensation paid or is totally*
 0173 ~~disallowed upon a full hearing on the claim~~, the employer and
 0174 the employer's insurance carrier shall be reimbursed from the
 0175 workers' compensation fund established in K.S.A. 44-566a and
 0176 amendments thereto, for all amounts of compensation so paid
 0177 which are in excess of the amount of compensation that the
 0178 employee is entitled to as determined in the full hearing on the
 0179 claim. The director shall determine the amount of compensation
 0180 paid by the employer or insurance carrier which is to be reim-
 0181 bursed under this subsection, and the director shall certify to the
 0182 commissioner of insurance the amount so determined. Upon
 0183 receipt of such certification, the commissioner of insurance shall
 0184 cause payment to be made to the employer or the employer's
 0185 insurance carrier in accordance therewith.

0186 Sec. 14. K.S.A. 44-536 is hereby amended to read as follows:
 0187 44-536. (a) ~~With~~ respect to any and all proceedings in connection
 0188 with any initial or original claim for compensation, no claim of
 0189 any attorney for services rendered in connection with the secur-
 0190 ing of compensation for an employee or ~~his or her~~ *the employee's*
 0191 dependents, whether secured by agreement, order, award or a
 0192 judgment in any court shall exceed ~~twenty-five percent (25%)~~
 0193 ~~25% of the amount of compensation recovered and paid~~, in
 0194 addition to actual expenses incurred, and ~~subject to the other~~

Subject to the other provisions of this section, with

0195 ~~provisions of this section. Except as hereinafter provided in this~~
 0196 ~~section, in death cases, total disability and partial disability~~
 0197 ~~cases, the amount of an attorney's fees shall not exceed twenty~~
 0198 ~~five percent (25%) 25%~~ of the sum which would be due under
 0199 the workmen's workers compensation act for four hundred fif-
 0200 teen (415) 415 weeks of permanent total disability based upon
 0201 the employee's average gross weekly wage prior to the date of
 0202 the accident and subject to the maximum weekly benefits pro-
 0203 vided in K.S.A. 44-510c and amendments thereto, ~~except that the~~
 0204 ~~amount of an attorney's fee shall not exceed 15% of such sum in~~
 0205 ~~each case in which there is no issue as to whether or not the~~
 0206 ~~employee sustained personal injury by accident arising out of~~
 0207 ~~and in the course of employment.~~

the total of the amount equal to 25% of that portion of the compensation recovered and paid which is not more than \$20,000, plus the amount equal to 10% of that portion of the compensation recovered and paid which is more than \$20,000 but is not more than \$70,000, and plus the amount equal to 5% of that portion of the compensation recovered and paid which is more than \$70,000. Except as provided in subsection (j), in any case involving compensation for death, total permanent disability or partial permanent disability, the amount of attorney fees therefor shall not exceed the total of the amount equal to 25% of that portion

0208 (b) All attorneys' attorney fees in connection with the initial
 0209 or original claim for compensation shall be fixed pursuant to a
 0210 written contract between the attorney and the employee or his or
 0211 her the employee's dependents, and every attorney, whether the
 0212 disposition of the original claim is by agreement, settlement,
 0213 award, judgment or otherwise, shall file his or her the attorney's
 0214 contract with the director who shall approve said such contract
 0215 only if it is in accordance with all provisions of this section. Any
 0216 contracts for attorneys' attorney fees not in excess of the limits
 0217 provided in this section and approved by the director shall be
 enforceable as a lien on the compensation due or to become due.

which is not more than \$20,000, plus the amount equal to 10% of that portion of such sum which is more than \$20,000 but is not more than \$70,000, and plus the amount equal to 5% of that portion of such sum which is more than \$70,000. The amount of an attorney's fee shall be subject to review and approval by the director under this section and shall not exceed the maximum amount determined under this subsection, except as provided in subsection (j)

0219 (c) No attorneys' attorney fees shall be charged with respect
 0220 to compensation for medical expenses, except where an allow-
 0221 ance is made for proposed or future treatment as a part of a
 0222 compromise settlement.

and subject to the maximum amount determined under subsection (a)

0223 (d) No attorneys' attorney fees shall be charged in connec-
 0224 tion with any temporary total disability compensation unless the
 0225 payment of such compensation in the proper amount is refused,
 0226 or unless such compensation is terminated by the employer and
 0227 the payment of such compensation is obtained or reinstated by
 0228 the efforts of the attorney, whether by agreement, settlement,
 0229 award or judgment.

and subject to the maximum amount determined under subsection (a)

0230 (e) With regard to any claim where there is no dispute as to
 0231 any of the material issues prior to representation of the claimant

0232 or claimants by an attorney, or where the amount to be paid for
0233 compensation does not exceed the offer made to the claimant or
0234 claimants by the employer prior to representation by an attorney,
0235 the fees to any such attorney shall not exceed either the sum of
0236 ~~two hundred fifty dollars (\$250)~~, \$250 or a reasonable fee for the
0237 time actually spent by the attorney, as determined by the direc-
0238 tor, whichever is greater, exclusive of reasonable *attorney's at-*
0239 *torney* fees for any representation by such attorney in reference
0240 to any necessary probate proceedings.

0241 (f) All *attorneys' attorney* fees for representation of an em-
0242 ployee or ~~his or her~~ *the employee's* dependents shall be only
0243 recoverable from compensation actually paid to such employee
0244 or dependents, except as specifically provided otherwise in
0245 subsection (g) and (h) of this section.

0246 (g) In the event any attorney renders services to an employee
0247 or ~~his or her~~ *the employee's* dependents, subsequent to the
0248 ultimate disposition of the initial and original claim, and in
0249 connection with an application for review and modification, a
0250 hearing for vocational rehabilitation, a hearing for additional
0251 medical benefits, or otherwise, such attorney shall be entitled to
0252 reasonable *attorney's attorney* fees for such services, in addition
0253 to *attorney's attorney* fees received or which ~~he or she~~ *the*
0254 *attorney* is entitled to receive by ~~his or her~~ contract in connec-
0255 tion with the original claim, and such *attorney's attorney* fees
0256 shall be awarded by the director on the basis of the reasonable
0257 and customary charges in the locality for such services and not on
0258 a contingent fee basis. If the services rendered under this sub-
0259 section by an attorney result in an additional award of compen-
0260 sation, the *attorney's attorney* fees shall be paid from such
0261 amounts of compensation. If such services involve no additional
0262 award of compensation, the director shall fix the proper amount
0263 of such attorney's fees in accordance with this subsection and
0264 such fees shall be paid by the employer.

0265 (h) Any and all disputes regarding *attorneys' attorney* fees,
0266 whether such disputes relate to which of one or more attorneys
0267 represents the claimant or claimants or is entitled to the *attor-*
0268 *neys' attorney* fees, or a division of *attorneys' attorney* fees

0269 where the claimant or claimants are or have been represented by
 0270 more than one attorney, or any other disputes concerning attor-
 0271 ney's attorney fees or contracts for attorneys' attorney fees, shall
 0272 be heard and determined by the director, after reasonable notice
 0273 to all interested parties and attorneys.

0274 (i) After reasonable notice and hearing before the director,
 0275 any attorney found to be in violation of any provision of this
 0276 section shall be required to make restitution of any excess fees
 0277 charged.

0278 Sec. 15. K.S.A. 44-567 is hereby amended to read as follows:

0280 44-567. (a) An employer (1) who operates within the provisions of
 0281 the workmen's workers compensation act (2) and who knowingly
 0282 employs or retains a handicapped employee, as defined in K.S.A.
 0283 44-566 and amendments thereto; shall be relieved of liability for
 0284 compensation awarded or be entitled to an apportionment of the
 0285 costs thereof as follows:

0286 (A) Whenever a handicapped employee is injured or is dis-
 0287 abled or dies as a result of an injury and the director awards
 0288 compensation therefor and finds that the injury, disability or the
 0289 death resulting therefrom probably or most likely would not
 0290 have occurred but for the preexisting physical or mental impair-
 0291 ment of the handicapped employee, all compensation and ben-
 0292 efits payable because of the injury, disability or death shall be
 0293 paid from the workers' compensation fund.

0294 (B) Subject to the other provisions of the workmen's workers
 0295 compensation act, whenever a handicapped employee is injured
 0296 or is disabled or dies as a result of an injury and the director finds
 0297 that the injury probably or most likely would have been sus-
 0298 tained or suffered without regard to the employee's preexisting
 0299 physical or mental impairment but the resulting disability or
 0300 death was contributed to by the preexisting impairment, the
 0301 director shall determine in a manner which is equitable and
 0302 reasonable and based upon medical evidence the amount of
 0303 disability and proportion of the cost of award which is attributa-
 0304 ble to the employee's preexisting physical or mental impairment,
 0305 and the amount so found shall be paid from the workers' com-
 0306 pensation fund.

(j) ~~In exceptional cases, the director may authorize reasonable amounts of attorney fees under this subsection in addition to the amount otherwise authorized in accordance with this section.~~ In determining the reasonableness of such additional amount of attorney fees, the director shall consider the following:

(1) ^{again made prior to litigation} The time and labor required, the novelty and difficulty of the questions involved and the skill requisite to perform the legal service properly;

(2) the likelihood, if apparent to the employee or the employee's dependents, that the acceptance of the particular case will preclude other employment by the attorney;

(3) the fee customarily charged in the locality for similar legal services;

(4) the amount involved and the results obtained;

(5) the time limitations imposed by the employee, by the employee's dependents or by the circumstances;

(6) the nature and length of the professional relationship with the employee or the employee's dependents; and

(7) the experience, reputation and ability of the attorney or attorneys performing the services.

Provided that the fee shall not be over 25% of

0306 (b) In order to be relieved of liability under this section, the
0307 employer must prove either that the employer had knowledge of
0308 the preexisting impairment at the time the employer employed
0309 the handicapped employee or that the employer retained the
0310 handicapped employee in employment after acquiring such
0311 knowledge. The employer's knowledge of the preexisting im-
0312 pairment may be established by any evidence sufficient to
0313 maintain the employer's burden of proof with regard thereto.
0314 *Knowledge of a physician who examined or treated the em-*
0315 *ployee on behalf of the employer shall be attributed to the*
0316 *employer. If the employer, prior to the occurrence of a subse-*
0317 *quent injury to a handicapped employee, files with the director a*
0318 *notice of the employment or retention of such employee, to-*
0319 *gether with a description of the handicap claimed, such notice*
0320 *and description of handicap shall create a presumption that the*
0321 *employer had knowledge of the preexisting impairment. The*
0322 *employer's knowledge of a preexisting impairment establishes a*
0323 *reservation in the mind of the employer when deciding whether*
0324 *to hire or retain the employee.*

0325 (c) Knowledge of the employee's preexisting impairment or
0326 handicap at the time the employer employs or retains the em-
0327 ployee in employment shall be presumed conclusively if the
0328 employee, in connection with an application for employment or
0329 an employment medical examination or otherwise in connection
0330 with obtaining or retaining employment with the employer,
0331 knowingly: (1) Misrepresents that such employee does not have
0332 such an impairment or handicap; (2) misrepresents that such
0333 employee has not had any previous accidents; (3) misrepresents
0334 that such employee has not previously been disabled or com-
0335 pensated in damages or otherwise because of any prior accident,
0336 injury or disease; (4) misrepresents that such employee has not
0337 had any employment terminated or suspended because of any
0338 prior accident, injury or disease; (5) misrepresents that such
0339 employee does not have any mental, emotional or physical
0340 impairment, disability, condition, disease or infirmity; or (6)
0341 misrepresents or conceals any facts or information which are
0342 reasonably related to the employee's claim for compensation.

0343 (d) An employer shall not be relieved of liability for com-
0344 pensation awarded nor shall an employer be entitled to an
0345 apportionment of the costs thereof as provided in this section,
0346 unless the employer shall cause the commissioner of insurance,
0347 in the capacity of administrator of the workers' compensation
0348 fund, to be impleaded, as provided in K.S.A. 44-566a and
0349 amendments thereto, in any proceedings to determine the com-
0350 pensation to be awarded a handicapped employee who is injured
0351 or disabled or has died, by giving written notice of the em-
0352 ployee's claim to the commissioner of insurance prior to the first
0353 full hearing where any evidence is presented on the claim.

0354 (e) Amendments to this section shall apply only to cases
0355 where a handicapped employee, or the employee's dependents,
0356 claims compensation as a result of an injury occurring after the
0357 effective date of such amendments.

0358 (f) The total amount of compensation due the employee shall
0359 be the amount for disability computed as provided in K.S.A.
0360 44-503a, 44-510 ~~to through 44-510g, inclusive,~~ and 44-511, and
0361 amendments thereto, and in no case shall the payments be less
0362 nor more than the amounts provided in K.S.A. 44-510c and
0363 amendments thereto.

0364 Sec. 16. K.S.A. 44-574 is hereby amended to read as follows:
0365 44-574. The provisions of sections ~~1 to 55, inclusive, of this act~~
0366 ~~and the acts contained in articles 5 and 5a of chapter 44 of the~~
0367 ~~Kansas Statutes Annotated K.S.A. 44-501 through 44-592 and~~
0368 ~~44-5a01 through 44-5a22, and any acts amendatory thereof or~~
0369 ~~supplemental thereto, shall be construed together and shall be~~
0370 ~~known and may be cited as the "workmen's workers compensa-~~
0371 ~~tion act."~~ Any reference in any of the statutes of this state to any
0372 ~~of the acts contained in article 5 or 5a of chapter 44 of the Kansas~~
0373 ~~Statutes Annotated statutes referred to by this section shall be~~
0374 ~~deemed to be a reference to the workmen's workers compensa-~~
0375 ~~tion act. Whenever the workmen's compensation act, or words of~~
0376 ~~like effect, is referred to or designated by statute, contract or~~
0377 ~~other document, such reference or designation shall be deemed~~
0378 ~~to apply to the workers compensation act.~~

0379 Sec. 17. K.S.A. 44-501, 44-508, 44-510, 44-510b, 44-510c, 44-

0380 510d, 44-510e, 44-510f, 44-511, 44-512a, 44-519, 44-528, 44-534a,
0381 44-536, 44-567 and 44-574 are hereby repealed.

0382 Sec. 18. This act shall take effect and be in force from and
0383 after its publication in the statute book.

SIMULTANEOUS BILATERAL
UPPER EXTREMITY REPETITIVE
USE CONDITIONS

HYPOTHETICAL: \$450.00 average weekly wage.
10% functional impairment to each upper extremity at the wrist.
No temporary total benefits paid.
Claimant cannot return to same job.

KANSAS:	\$75,000.00
OKLAHOMA:	\$16,300.00
IOWA:	\$10,336.40
NEBRASKA:	\$7,875.00
MISSOURI:	\$6,268.40
ARKANSAS:	\$5,250.00
COLORADO:	\$1,747.20

(Kansas is the only state which applies a work disability to such instances.)

SOURCE: Fred S. James, Claims Management Service
(A national third party claims administrator)

Attachment #3
House Labor & Industry
2/25/87