

*Arthur Douville* 4-7-87

MINUTES OF THE House COMMITTEE ON Labor and Industry

The meeting was called to order by Representative Arthur Douville at  
Chairperson

9:17 a.m./~~p.m.~~ on February 26, 1987 in room 526-S of the Capitol.

All members were present except:

Representative R. D. Miller - Excused

Representative Theo Cribbs - 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:

Chairman Douville called the committee's attention to changes with respect to the balloon version of H.B. 2186, attachment #1.

Representative Patrick made a motion to strike the words "objective and" from line 0662, page 18 of the corrected version and otherwise accept the corrected version of pages 18 and 20 as is. Representative Hensley seconded the motion. The motion carried. The chairman stated that the corrected version of pages 18 and 20 were now incorporated into H.B. 2186 as a result of the vote taken.

Chairman Douville called attention to line 0655, page 18, where the words "return to" had been replaced with "perform work in". Jim Wilson explained the changes made to the corrected balloon version of pages 18 and 20. The chairman then decided to address the bill with any possible changes, page by page.

On page 7 of the bill, Jim Wilson explained to the committee instances involving some of the community work service programs, such as the W.I.N. program and programs that are operated by SRS. Under the current statute, individuals required to perform certain types of work in community service situations must be provided either workers' compensation coverage or comparable coverage by the secretary. It had been understood that the whole medical provided by SRS was comparable coverage but that has been challenged in several cases and under the state self-insurance program, those cases have become workers' compensation cases pursuant to claimants. Secretary Harder conveyed a desire to have the definition of community service work expanded to include these kinds of community work experience programs. That would, at the end of line 0253, put these programs on the same level as a community work service situation. In a program administered by SRS, should they then file an election to have those people covered, it would be workers' compensation. If the election is not filed, then it is not workers' compensation.

A representative asked if that would increase the liability for SRS in case of an accident. He asked further if this would have the effect of "putting up a flag". Jim Wilson's response was that it would have the effect of excluding coverage unless an affirmative election were made.

Discussion ensued whether or not time would allow for this to be incorporated into the bill at this time but several alternatives were given.

Representative O'Neal proposed additional language to the balloon, page 7, line 0266, after the words "transportation costs" a comma be inserted "charges for medical records, awards and testimony" be added.

The chairman asked what the effect of this change would be. Representative O'Neal stated that it would make clear that the director has the power to determine reasonableness of the costs of treatment, attaining records and testimony. He further stated that there is a record of abuse by claimants' and respondents' counsel.

Being asked to do so, Representative O'Neal made a motion that this change of language be incorporated into the bill. Representative Bideau seconded the motion which passed on a voice vote.

CONTINUATION SHEET

MINUTES OF THE House COMMITTEE ON Labor and Industry,  
room 526-S, Statehouse, at 9:17 a.m. ~~p.m.~~ on February 26, 1987.

Representative O'Neal made a motion to, on line 0304, strike the words, "obtaining the opinion" and on line 0305 strike the words "of such physician or for" and reinsert the previously stricken words "or treatment". (The language would then read: "the employee's choice for the purpose of examination, diagnosis or treatment".) Representative Hensley seconded and the motion passed.

On page 17, in the balloon, (23), line 3, Representative O'Neal made a motion to insert the word "upper" following the word "opposite". (That line would then read: "occurring in opposite upper extremities, whether".) The motion was seconded by Representative Patrick and passed on a voice vote.

Regarding the review and modification section of the bill, beginning on page 28, line 115, Representative O'Neal suggested that the words incapacity or disability could be further explained by using the words physical impairment or work disability. Discussion followed and Representative Patrick suggested that, for consistency in the language, the words functional impairment and work disability (used in the corrected amendment on page 18) be used. Representative O'Neal made a motion to use the language suggested by Representative Patrick, who also seconded the motion which then passed.

Jim Wilson pointed out that Section 11 should be stricken from the bill starting on page 27. He stated that once all the new language at the top of page 28 was stricken from the bill, that was the policy change in that section. Representative Hensley made a motion to strike section 11. Representative Bideau seconded the motion which then passed.

Representative Whiteman asked for clarification of the word "amount" on page 31, #5. After discussion, she made a motion that the words "of compensation" be inserted following "amount". The motion was seconded by Representative Green and passed by the committee.

Representative O'Neal discussed the portion of the bill, on page 31 in the balloon, referring to the section on attorney fees stating that, "The director shall review all claims of attorneys for services rendered", etc. He proposed that instead of all claims, contested or otherwise, that concentration be on review of attorney fees when there is a settlement, lump sum or other, rather than those that have been litigated where compensation is being paid. Representative Bideau pointed out that lump sum settlements can occur after a contested hearing but the only ones excluded from review are awards paid weekly over 415 weeks. Representative O'Neal put his concern in the form of a conceptual motion which was seconded by Representative Whiteman and passed by the committee.

Representative O'Neal made a motion to strike the new language in lines 0314, 0315 and 0316, page 34, stating, "Knowledge of a physician who examined or treated the employee on behalf of the employer shall be attributed to the employer." Chairman Douville asked the basis for this. The response was that there should be some knowledge on the part of the employer. An employee may be sent by the employer to a physician for a physical not knowing that there is a handicap. If the doctor has anything in his records to show a pre-existing problem, then the workers' compensation fund is invoked. Representative Bideau seconded the motion which was passed with two "no" votes.

Representative Buehler made a motion to adopt all of the balloon version of HB 2186 into the body of the bill. Representative Mead seconded the motion which passed with one "no" vote.

Jim Wilson distributed copies of a proposed amendment to HB 2186 which addressed vocational rehabilitation, attachment #2.

The meeting was adjourned at 10:06 a.m.

The next meeting will be February 27, 1987, at 9:00 a.m.

HOUSE COMMITTEE  
ON  
LABOR AND INDUSTRY

GUEST LIST  
City

DATE February 26, 1987

Name

Representing

- Guds Langsten	Topoka	DHR / Work Comp
B. Mariani	Topeka	Dept of Adm.
Diana Cole	Topeka	Northern Nat Gas
D. WAYNE ZIMMERMAN	TOPEKA	KANSAS CONTRACTORS ASSOC.
MARK Beshears	Topeka	KCC I
Gran Watson	Topeka	Rehab SVC / SRG
Richard Johnson	Topeka	Rehab SVC / SRG
Kon CACHES	WICHITA	BMAC
Bud Cowan	Topeka	IBP, inc
Rob Hodges	"	KCCI
Jon Josserrano	"	Wichita Chamber
Kathy J. M... ..	"	MCAK
Mary Ellen Conder	Wichita	St Francis Med Center
Steve Johnson	Topeka	Ks Ins Dept
John Long	Topeka	Ks. Ins Dept
Lori Callahan	Topeka	am. lens. assoc
Tom Hammons	Wichita	Mechanist
John Ostrowski	Topeka	AFL-CIO -

HOUSE BILL No. 2186

By Committee on Labor and Industry

2-4

Draft of Amendments  
For Consideration by Committee on Labor and Industry

2-25-87

(Corrected pg 18 and 20)

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.

[44-556,

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 ~~[by proving]~~ the various conditions on which the  
0037 claimant's right depends. ~~x~~

[and to prove

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

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

Attachment #1  
House Labor & Industry  
2/26/87

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.*

0107 Sec. 2. K.S.A. 44-508 is hereby amended to read as follows:  
 0108 4-508. 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

(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 to both employers and employees in cases arising thereunder.

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  
0131 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  
0145 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.

0168 (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

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 every case, all

approval

and necessary

1

269 hear and determine all disputes as to such charges and interest  
270 due thereon.

271 (b) Any physician, nurse, medical supply establishment, sur-  
272 gical supply establishment, ambulance service or hospital who  
273 accept the terms of the ~~workmen's~~ workers compensation act by  
274 providing services or material thereunder shall be bound by the  
275 fees approved by the director and no injured employee or de-  
276 pendent of a deceased employee shall be liable for any charges  
277 above the amounts approved by the director. If the employer has  
278 knowledge of the injury and refuses or neglects to reasonably  
279 provide the benefits herein required, the employee may provide  
280 the same for such employee, and the employer shall be liable for  
281 such expenses subject to the regulations adopted by the director.  
282 *No judgment may be entered by any district court in any action*  
283 *for the payment of an amount for medical services or materials*  
284 *provided under the workers compensation act and such action*  
285 *shall be stayed until final adjudication of any claim for com-*  
286 *ensation for which an application for hearing is filed with the*  
287 *director under K.S.A. 44-534 and amendments thereto. In the*  
288 *case of an action stayed hereunder, any award of compensation*  
289 *shall require any amounts payable for medical services or ma-*  
290 *terials to be paid directly to the provider thereof plus an amount*  
291 *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 66 $\frac{2}{3}$ % 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,  
0353 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  
0367 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 (~~66<sup>2</sup>/<sub>3</sub>%~~) 66<sup>2</sup>/<sub>3</sub>% 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 (66<sup>2</sup>/<sub>3</sub>%)~~ 66<sup>2</sup>/<sub>3</sub>%  
 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.



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 (66<sup>2</sup>/<sub>3</sub>%)~~ 66<sup>2</sup>/<sub>3</sub>% 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~~  
05  $1/2$   $1/2$  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~~ 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  
 ( ) 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.

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0639 temporary partial general disability shall be ~~sixty-six and two-~~  
0640 ~~thirds percent (66<sup>2</sup>/<sub>3</sub>%)~~ 66<sup>2</sup>/<sub>3</sub>% 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~~ *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 ~~or~~ *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 (66<sup>2</sup>/<sub>3</sub>%)~~ 66<sup>2</sup>/<sub>3</sub>%. 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*

performs work in

and to earn comparable wages

impairment. Functional impairment means the extent, expressed as a percentage, of the loss of a portion of the total physiological capabilities of the human body as established

Comparable to

at the time of

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

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

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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)~~ \$125,000 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)~~ \$100,000 for an injury or any aggravation thereof.

0735 (3) For permanent or temporary partial disability, including  
 0736 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~~ \$100,000 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  
07 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 (c) 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) 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

[final

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

a reasonable amount for such services or

, whichever is less

## PROPOSED AMENDMENTS TO H.B. NO. 2186

On page 21, preceding line 756, by inserting the following material to read as follows:

"Sec. 9. K.S.A. 44-510g is hereby amended to read as follows: 44-510g. (a) A primary purpose of the ~~workmen's~~ workers compensation act shall be to restore the injured employee to substantial and gainful employment. To this end, the director shall appoint, subject to the approval of the secretary, a specialist in medical, physical and vocational rehabilitation, who shall be referred to as the rehabilitation administrator. The rehabilitation administrator shall be in the classified service under the Kansas civil service act. The rehabilitation administrator shall: (1) Continuously study the problems of physical and vocational rehabilitation; (2) investigate and maintain a directory of all rehabilitation facilities, public or private, in this state, and, where such rehabilitation administrator determines necessary, in any other state; and (3) be fully knowledgeable regarding the eligibility requirements of all state, federal and other public medical, physical and vocational rehabilitation facilities and benefits. With respect to private facilities and agencies providing medical, physical and vocational rehabilitation services, including rehabilitation service programs provided directly by employers, the director shall approve as qualified such facilities, institutions, agencies, employer programs and physicians as are capable of rendering competent rehabilitation services. No such facility or, institution, agency or employer program shall be considered qualified unless it is specifically equipped to provide rehabilitation services for persons suffering from either some specialized type of disability or some general type of disability within the field of occupational injury or disease, and is staffed with trained and qualified personnel and, with respect to medical and physical rehabilitation, unless it is supervised by a

physician qualified to render such service. No physician shall be considered qualified unless such physician has had such experience and training as the director may deem necessary.

(b) Under the direction of the director, and subject to the director's final approval, the rehabilitation administrator shall have the duties of directing and auditing medical, physical and vocational rehabilitation of employees in accordance with the provisions of this section.

(c) An employee who has suffered an injury shall be entitled to prompt medical and physical rehabilitation services, as may be reasonably necessary to restore such employee to substantial and gainful employment and as provided in this section.

(d) When as a result of an injury or occupational disease which is compensable under the ~~workmen's~~ workers compensation act, the employee is unable to perform work for which such employee has previous training, education, qualifications or experience, or when such employee is unable to perform other substantial and gainful employment, such employee shall be entitled to such vocational rehabilitation services, including retraining and job placement, as may be reasonably necessary to restore such employee to substantial and gainful employment and as provided in this section.

(e) If such rehabilitation services are not voluntarily furnished to the employee by the employer, the director, on such director's own motion or upon application of ~~the--employee--or employer,--and--after--affording-the-parties-an-opportunity-to-be heard-and-to-present-evidence,--may~~ any party, shall refer the employee to a qualified physician or a qualified public or private agency or facility, or the employer's rehabilitation services program, if qualified, for evaluation and for a report of the practicability of, need for, and kind of service, treatment, training or rehabilitation which is or may be necessary and appropriate to render such employee fit for substantial and gainful employment. The costs of such evaluation

and report shall be at the expense of the employer. Within 10 days after such referral, the report shall be submitted to the rehabilitation administrator. Within 10 days after receipt by the rehabilitation administrator, the rehabilitation administrator shall deliver copies of the report to each party and to the assigned administrative law judge in an active, docketed claim. Upon receipt of such report, and after affording the parties an opportunity to be heard and present evidence, the director:

(1) May order that any treatment, or medical and physical rehabilitation, as recommended in the report or as the director may deem necessary, be provided at the expense of the employer;

(2) where the employee is unable to engage in any type of substantial and gainful employment, and vocational rehabilitation, reeducation or training is recommended in the report, or is deemed necessary by the director to restore the employee to some type of substantial and gainful employment, the director may direct the an employee to the appropriate federal, state or other public facility or agency where such services will or may be provided at no cost to the employer, except as hereinafter provided in this section; and

(3) if the employee is ~~is~~ not eligible for such vocational rehabilitation, reeducation or training through any such state, federal or other public facility or agency, or where such services through such facilities or agencies are not available to the employee within a reasonable period of time, the director may order that such services be provided at the expense of the employer at by any qualified private agency or facility in this state or any state contiguous to this state or by a qualified rehabilitation services program provided directly by the employer. Any such services to be provided at the expense of the employer under this paragraph (3), shall not extend for a period of more than 26 52 weeks, except that in extremely unusual cases, after a hearing and the presentation of evidence, the director, by special order, may extend the period for not more than an additional 26 52 weeks. The employer shall have a right to appeal

to the district court any such special order by the director for any extension of the initial ~~twenty-six-week~~ fifty-two-week period, within the time and in the manner provided in K.S.A. 44-556, and amendments thereto, and any such special order shall be stayed until the district court has determined the appeal. There shall be no right of appeal to the Kansas supreme court or court of appeals from a judgment of the district court sustaining or overruling any such special order of the director.

(f) Where vocational rehabilitation, reeducation or training is to be furnished at the expense of the employer under this section, and such services require that the employee reside at or near a facility or institution, away from the employee's customary county of residence, either in or out of the state of Kansas, the reasonable costs of the employee's board, lodging and travel, not to exceed a maximum total of ~~\$2,000~~ \$5,000 for any ~~twenty-six-week~~ fifty-two-week period, shall be paid by the employer, except that, in unusual cases where, after a hearing and the presentation of evidence the director finds that the costs are clearly reasonable and necessary, the director may require by special order that the employer pay an additional amount for the costs of the employee's board, lodging and travel, of not more than ~~\$1,000~~ \$2,000.

(g) The employer shall pay temporary total disability compensation during any period of vocational rehabilitation, reeducation or training, computed as provided in K.S.A. 44-510c and amendments thereto, but the employer shall receive credit for any weekly, monthly or other monetary payments made to the employee or such employee's family by any state, federal or other public agency during any such period, exclusive of any such payments for the board, lodging and travel expenses of the employee. The number of weeks during which temporary total disability compensation is paid during vocational rehabilitation, reeducation or training shall not be deducted from the maximum number of weeks available for the payment of disability compensation under the schedule provided in K.S.A. 44-510d and

amendments thereto.

(h) The director shall cooperate with federal, state and other public or private agencies for vocational rehabilitation, reeducation or training, or medical or physical rehabilitation. The employer shall not be required to pay the reasonable costs of the employee's board, lodging and travel where such costs are borne by any federal, state or other public agency, nor shall any costs for vocational rehabilitation, reeducation or training be assessed to the employer if such vocational rehabilitation, reeducation or training is in fact furnished by and at the expense of any federal, state or other public agency.

(i) Whenever the director determines that there is a reasonable probability that with appropriate medical, physical or vocational rehabilitation or reeducation or training, a person who is entitled to compensation for permanent total disability, partial disability, or any other disability under the workmen's compensation act, may be rehabilitated to the extent that such person can become substantially and gainfully employed or increase such person's earning capacity, and that it is for the best interests of such person to undertake such rehabilitation or reeducation or training, if the injured employee without good cause refuses to undertake the rehabilitation, educational or training program determined by the director to be suitable for such employee, or refuses to be evaluated under the provisions of subsection (e), the director shall suspend the payment of any compensation until the employee consents to undertake such program or to be so evaluated, and the director shall cancel the compensation otherwise payable if any such refusal persists for a period in excess of 90 days.

(j) At such time as any medical, physical or vocational rehabilitation or reeducation or training has been completed under this section, the employer shall have the right, by the filing of an application with the director, to seek a modification of any award which has been rendered granting any compensation to the employee for any disability. Upon at least

20 days' notice by registered mail to all parties, the director shall set the application for hearing and the parties shall present all material and relevant evidence. In the event that the director determines that the employee is rehabilitated medically, physically or vocationally, so that such employee is able to engage in substantial and gainful employment, the director shall cancel any award of compensation for temporary total or permanent total disability, subject to review and modification pursuant to K.S.A. 44-528 and amendments thereto, and shall modify any existing award of partial disability, or, if no such award has been made, the director shall make an award of partial disability, to reflect only such partial disability, if any, as exists at the conclusion of such rehabilitation, reeducation or training. Any award of partial disability made pursuant to this subsection shall be subject to the provisions of K.S.A. 44-510d and 44-510e, and amendments thereto.

(k) If an incumbent rehabilitation administrator has served in such office for one year or more on the effective date of this act, such rehabilitation administrator shall be considered as having attained permanent status as a rehabilitation administrator.";

And by renumbering sections accordingly;