

Approved AWD Date 4-4-90

MINUTES OF THE House COMMITTEE ON Labor & Industry

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

9:05 a.m. ~~p.m.~~ on March 20, 1990 in room 526-S of the Capitol.

All members were present except:

Committee staff present:

Jerry Donaldson - Legislative Research Department
Jim Wilson - Revisor of Statutes' Office
Kay Johnson - Committee Secretary

Conferees appearing before the committee:

A.J. Kotich - Department of Human Resources
Bill Clawson - Department of Human Resources
Paul Bicknell - Department of Human Resources
Bill Laves - Department of Human Resources

The meeting was called to order at 9:05 a.m. by Chairman Douville. The hearings were opened on SB 612, SB 645 and SB 679.

SB 612: Employment security law, effective date of shared work compensation program.

Bill Clawson explained that this bill allows for errors or mishandling. For example, an employer who realizes on Wednesday that he can't make Friday's payroll and wants to get on the work sharing program. Currently, it would be administratively impossible for this to happen. SB 612 allows a 14 day leeway in the effective date of the program. Mr. Clawson stated this is an insignificant change and would help in the administration of the program. The Department of Human Resources supports the bill.

SB 645: Employment security law, lessor employing units, board of review terms of office, contribution rates.

A.J. Kotich explained that this bill came about because of lessor/lessee relationships where an employee would apply for unemployment insurance benefits and the Department of Human Resources would discover that no wages had been paid in. It arose because of the need to track taxes and wages and to ensure that those who deserve unemployment get unemployment. The Employment Security Advisory Council supports this bill.

Paul Bicknell gave a brief description of the lessor/lessee relationship and stated that this bill requires separate reporting by the client lessee. This provides fund protection as the client lessee is jointly and separately liable if the lessor employer fails to pay taxes.

Chairman Douville asked how a lessor/lessee arrangement is separated from temporary help. Mr. Bicknell responded that temporary help services actually do the hiring and firing of employees whereas in a leasing arrangement, the client lessee still does that.

Representative Patrick asked if the change of definition of total wages on page 2 will increase the unemployment compensation rate. Mr. Bicknell responded no. Representative Patrick questioned the language on page 1, lines 22-24. Isn't "corporate officer" too broad of a term? Mr. Bicknell responded it is intended to avoid abuse. Mr. Kotich said the majority of the time, corporate officers are not employees. If, in fact, they are employees they should be covered under this bill. Responding to a question from Representative Patrick, Mr. Kotich explained this bill is a preventative measure and he doesn't think there is any cost to the employer.

Mr. Bicknell explained other changes in SB 645:

Page 2, lines 14-17: definition of total wages.

Page 20, lines 12-17: definition of lessor employing unit and client lessee.

Page 22, lines 9,10,12,13,26-29: clarifies the appointment of the public member to the board of review.

Page 35: Expands the number of tax rates from 21 to 51.

Unless specifically noted, the individual remarks recorded herein have not been transcribed verbatim. Individual remarks as reported herein have not been submitted to the individuals appearing before the committee for editing or corrections.

CONTINUATION SHEET

MINUTES OF THE House COMMITTEE ON Labor & Industry,
room 526-S, Statehouse, at 9:05 a.m./~~p.m.~~ on March 20, 1990

Bill Layes explained the tax rate expansion. 1) There will be no additional increase in assessment. 2) It will more accurately reflect individual employer performance. 3) Provides for smoother annual changes.

Chairman Douville asked about the basic reason for this change and the cost. Mr. Layes responded it is to more accurately reflect employer performance and there will be no cost as it will be handled by computer.

Representative Patrick asked how this will not have the effect of raising unemployment taxes for some employers. Mr. Layes responded that the total effect to the trust fund remains the same. Overall, out of 42,500 employers: 14,250 - lower, 12,250 - no change, 16,000 - higher.

SB 679: Employment security law, casual labor exemption.

Mr. Kotich explained this bill was originally worked in the Economic Development Committee and deals with casual labor, for example, someone who cuts the employer's grass. The Employment Security Advisory Council recommended adopting the federal definition: exempting up to \$50.00 per quarter for casual labor. That definition has been amended into the bill. This bill came about because of a specific situation that occurred with an employer.

Representative O'Neal questioned whether or not \$50.00 is a realistic amount. Mr. Kotich responded that the Employment Security Advisory Council only agreed to the dollar amount specified in the federal statute.

Chairman Douville stated the hearings would continue tomorrow on SB 612, SB 645 and SB 679.

Copies of Sub. HB 3069 were distributed for members to review before tomorrow's meeting, attachment #1.

The meeting adjourned at 10:00 a.m. The next meeting of the committee is scheduled for March 21, 1990 at 9:00 a.m. in room 526-S.

Proposed Substitute for HOUSE BILL NO. 3069
For Consideration by Committee on Labor and Industry

1 AN ACT concerning the workers compensation act; relating to the
2 administration thereof and benefits provided thereunder;
3 amending K.S.A. 44-515, 44-516, 44-518, 44-519, 44-551,
4 44-5a04 and 44-5a18 and K.S.A. 1989 Supp. 44-501, 44-508,
5 44-510, 44-510c, 44-510e, 44-510g, 44-512a, 44-528 and
6 44-556 and repealing the existing sections.

7 Be it enacted by the Legislature of the State of Kansas:

8 Section 1. K.S.A. 1989 Supp. 44-501 is hereby amended to
9 read as follows: 44-501. (a) If in any employment to which the
10 workers compensation act applies, personal injury by accident
11 arising out of and in the course of employment is caused to an
12 employee, the employer shall be liable to pay compensation to the
13 employee in accordance with the provisions of the workers
14 compensation act. In proceedings under the workers compensation
15 act, the burden of proof shall be on the claimant to establish
16 the claimant's right to an award of compensation and to prove the
17 various conditions on which the claimant's right depends. In
18 determining whether the claimant has satisfied this burden of
19 proof, the trier of fact shall consider the whole record.

20 (b) Except as provided in the workers compensation act, no
21 employer, or other employee of such employer, shall be liable for
22 any injury for which compensation is recoverable under the
23 workers compensation act nor shall an employer be liable to any
24 third party for any injury or death of an employee which was
25 caused under circumstances creating a legal liability against a
26 third party and for which workers compensation is payable by such
27 employer.

28 (c) Except for liability for medical compensation, as
29 provided for in K.S.A. 44-510 and amendments thereto, the

1 employer shall not be liable under the workers compensation act
2 in respect of any injury which does not disable the employee for
3 a period of at least one week from earning full wages at the work
4 at which the employee is employed.

5 (d) If it is proved that the injury to the employee results
6 from the employee's deliberate intention to cause such injury, or
7 from the employee's willful failure to use a guard or protection
8 against accident required pursuant to any statute and provided
9 for the employee, or a reasonable and proper guard and protection
10 voluntarily furnished the employee by the employer, or
11 substantially from the employee's intoxication, any compensation
12 in respect to that injury shall be disallowed. The employer shall
13 not be liable under the workers compensation act where the
14 injury, disability or death was substantially caused by the
15 employee's use of any drugs, chemicals or any other compounds or
16 substances, including but not limited to, any form or type of
17 narcotic drugs, marijuana, stimulants, depressants or
18 hallucinogens, except such drugs or medications which are
19 available to the public without a prescription from a physician
20 health care provider and which are used for the treatment of an
21 illness, or which were obtained and used by the employee pursuant
22 to and in accordance with such a prescription.

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

28 (f) Except as provided in the workers compensation act, no
29 construction design professional who is retained to perform
30 professional services on a construction project or any employee
31 of a construction design professional who is assisting or
32 representing the construction design professional in the
33 performance of professional services on the site of the
34 construction project, shall be liable for any injury resulting
35 from the employer's failure to comply with safety standards on

1 the construction project for which compensation is recoverable
2 under the workers compensation act, unless responsibility for
3 safety practices is specifically assumed by contract. The
4 immunity provided by this subsection to any construction design
5 professional shall not apply to the negligent preparation of
6 design plans or specifications.

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

14 Sec. 2. K.S.A. 1989 Supp. 44-508 is hereby amended to read
15 as follows: 44-508. As used in the workers compensation act:

16 (a) "Employer" includes (1) any person or body of persons,
17 corporate or unincorporate, and the legal representative of a
18 deceased employer or the receiver or trustee of a person,
19 corporation, association or partnership; (2) the state or any
20 department, agency or authority of the state, any city, county,
21 school district or other political subdivision or municipality or
22 public corporation and any instrumentality thereof; and (3) for
23 the purposes of community service work, the entity for which the
24 community service work is being performed and the governmental
25 agency which assigned the community service work, if any, if
26 either such entity or such governmental agency has filed a
27 written statement of election with the director to accept the
28 provisions under the workers compensation act for persons
29 performing community service work and in such case such entity
30 and such governmental agency shall be deemed to be the joint
31 employer of the person performing the community service work and
32 both shall have the rights, liabilities and immunities provided
33 under the workers compensation act for an employer with regard to
34 the community service work, except that the liability for
35 providing benefits shall be imposed only on the party which filed

1 such election with the director, or on both if both parties have
2 filed such election with the director; for purposes of community
3 service work, "governmental agency" shall not include any court
4 or any officer or employee thereof and any case where there is
5 deemed to be a "joint employer" shall not be construed to be a
6 case of dual or multiple employment.

7 (b) "Workman" or "employee" or "worker" means any person who
8 has entered into the employment of or works under any contract of
9 service or apprenticeship with an employer. Such terms shall
10 include but not be limited to: Executive officers of
11 corporations; professional athletes; persons serving on a
12 volunteer basis as duly authorized law enforcement officers,
13 ambulance attendants, mobile intensive care technicians, firemen
14 or firefighters, but only to the extent and during such periods
15 as they are so serving in such capacities; persons employed by
16 educational, religious and charitable organizations, but only to
17 the extent and during the periods that they are paid wages by
18 such organizations; persons in the service of the state, or any
19 department, agency or authority of the state, any city, school
20 district, or other political subdivision or municipality or
21 public corporation and any instrumentality thereof, under any
22 contract of service, express or implied, and every official or
23 officer thereof, whether elected or appointed, while performing
24 official duties; persons in the service of the state as volunteer
25 members of the Kansas department of civil air patrol, but only to
26 the extent and during such periods as they are officially engaged
27 in the performance of functions specified in K.S.A. ~~1988~~ 1989
28 Supp. 48-3302 and amendments thereto; volunteers in any
29 employment, if the employer has filed an election to extend
30 coverage to such volunteers; minors, whether such minors are
31 legally or illegally employed; and persons performing community
32 service work, but only to the extent and during such periods as
33 they are performing community service work and if an election has
34 been filed an election to extend coverage to such persons. Any
35 reference to an employee who has been injured shall, where the

1 employee is dead, include a reference to the employee's
2 dependents, to the employee's legal representatives, or, if the
3 employee is a minor or an incapacitated person, to the employee's
4 guardian or conservator. Unless there is a valid election in
5 effect which has been filed as provided in K.S.A. 44-542a and
6 amendments thereto, such terms shall not include individual
7 employers, limited or general partners or self-employed persons.

8 (c) (1) "Dependents" means such members of the employee's
9 family as were wholly or in part dependent upon the employee at
10 the time of the accident.

11 (2) "Members of a family" means only surviving legal spouse
12 and children; or if no surviving legal spouse or children, then
13 parents or grandparents; or if no parents or grandparents, then
14 grandchildren; or if no grandchildren, then brothers and sisters.
15 In the meaning of this section, parents include stepparents,
16 children include stepchildren, grandchildren include
17 stepgrandchildren, brothers and sisters include stepbrothers and
18 stepsisters, and children and parents include that relation by
19 legal adoption. In the meaning of this section, a surviving
20 spouse shall not be regarded as a dependent of a deceased
21 employee or as a member of the family, if the surviving spouse
22 shall have for more than six months willfully or voluntarily
23 deserted or abandoned the employee prior to the date of the
24 employee's death.

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

26 (A) A natural or adopted child of the employee except such a
27 child whose relationship to the employee has been severed by
28 adoption;

29 (B) a stepchild of the employee who lives in the employee's
30 household;

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

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

1 or mentally capable of earning wages in any type of substantial
2 and gainful employment or who is a full-time student attending an
3 accredited institution of higher education or vocational
4 education.

5 (d) "Accident" means an undesigned, sudden and unexpected
6 event or events, usually of an afflictive or unfortunate nature
7 and often, but not necessarily, accompanied by a manifestation of
8 force. The elements of an accident, as stated herein, are not to
9 be construed in a strict and literal sense, but in a manner
10 designed to effectuate the purpose of the workers compensation
11 act that the employer bear the expense of accidental injury to a
12 worker caused by the employment.

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

19 (f) The words "arising out of and in the course of
20 employment" as used in the workers compensation act shall not be
21 construed to include injuries to the employee occurring while the
22 employee is on the way to assume the duties of employment or
23 after leaving such duties, the proximate cause of which injury is
24 not the employer's negligence. An employee shall not be
25 construed as being on the way to assume the duties of employment
26 or having left such duties at a time when the worker is on the
27 premises of the employer or on the only available route to or
28 from work which is a route involving a special risk or hazard and
29 which is a route not used by the public except in dealings with
30 the employer.

31 (g) "Burden of proof" means the burden of a party to
32 persuade the trier of facts by a preponderance of the credible
33 evidence that such party's position on an issue is more probably
34 true than not true on the basis of the whole record.

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

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

2 (i) ~~The words "physician," "surgeon" or "doctor" shall mean~~
3 ~~and include~~ "Health care provider" means any person licensed, by
4 the proper licensing authority of this state, another state or
5 the District of Columbia, to practice medicine and surgery,
6 osteopathy, chiropractic, dentistry, optometry or podiatry.

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

8 (k) "Construction design professional" means any person who
9 is an architect, professional engineer, landscape architect or
10 land surveyor who has been issued a license by the state board of
11 technical professions to practice such technical profession in
12 Kansas or any corporation organized to render professional
13 services through the practice of one or more of such technical
14 professions in Kansas under the professional corporation law of
15 Kansas or any corporation issued a certificate of authorization
16 under K.S.A. 74-7036 and amendments thereto to practice one or
17 more of such technical professions in Kansas.

18 (l) "Community service work" means (1) public or community
19 service performed as a result of a contract of diversion or of
20 assignment to a community corrections program or suspension of
21 sentence or as a condition of probation or in lieu of a fine
22 imposed by court order; or (2) public or community service or
23 other work performed as a requirement for receipt of any kind of
24 public assistance in accordance with any program administered by
25 the secretary of social and rehabilitation services.

26 (m) "Utilization review" means the initial evaluation of
27 appropriateness in terms of both the level and the quality of
28 health care and health services provided a patient, based on
29 accepted standards of the health care profession involved. Such
30 evaluation is accomplished by means of a system which identifies
31 the utilization of health care services above the usual range of
32 utilization for such services, which is based on accepted
33 standards of the health care profession involved, and which
34 refers instances of possible inappropriate utilization to the
35 director for referral to a peer review committee.

1 (n) "Peer review" means an evaluation by a peer review
2 committee of the appropriateness, quality and cost of health care
3 and health services provided a patient, which is based on
4 accepted standards of the health care profession involved and
5 which is conducted in conjunction with utilization review.

6 (o) "Peer review committee" means a committee composed of
7 health care providers licensed to practice the same health care
8 profession as the health care provider who rendered the health
9 care services being reviewed.

10 Sec. 3. K.S.A. 1989 Supp. 44-510 is hereby amended to read
11 as follows: 44-510. Except as otherwise provided therein, medical
12 compensation under the workers compensation act shall be as
13 follows:

14 (a) It shall be the duty of the employer to provide the
15 services of a physician health care provider, and such medical,
16 surgical and hospital treatment, including nursing, medicines,
17 medical and surgical supplies, ambulance, crutches, and
18 apparatus, and transportation to and from the home of the injured
19 employee to a place outside the community in which such employee
20 resides, and within such community if the director in the
21 director's discretion so orders, as may be reasonably necessary
22 to cure and relieve the employee from the effects of the injury.

23 (1) The director shall prepare and adopt rules and
24 regulations which establish a schedule for the state approved by
25 the advisory panel, or schedules approved by the advisory panel
26 which are limited to defined localities, fixing the maximum fees
27 for medical, surgical, hospital, dental, nursing, vocational
28 rehabilitation or any other treatment or services provided or
29 ordered by health care providers and rendered to employees under
30 this section. Each such schedule shall include provisions and
31 review procedures for exceptional cases involving extraordinary
32 medical procedures or circumstances and shall include costs and
33 charges for medical records and testimony.

34 (2) The schedules of maximum fees shall be reasonable, shall
35 promote health care cost containment and efficiency with respect

1 to the workers compensation health care delivery system, and
2 shall be sufficient to ensure availability of such reasonably
3 necessary treatment, care and attendance to each injured employee
4 to cure and relieve the employee from the effects of the injury.

5 (3) (A) In every case, all fees, transportation costs and
6 charges under this section and all costs and charges for medical
7 records and testimony shall be subject to approval by the
8 director and shall be limited to such as are fair, reasonable and
9 necessary.

10 (B) There is hereby created an advisory panel to assist the
11 director in establishing schedules of maximum fees as required by
12 this section. The panel shall consist of the commissioner of
13 insurance, one representative each from the Kansas medical
14 society, the Kansas association of osteopathic medicine, the
15 Kansas hospital association and the Kansas chiropractic
16 association, and two members appointed by the secretary. One
17 member appointed by the secretary shall be a representative of
18 employers recommended to the secretary by the Kansas chamber of
19 commerce and industry. The other member appointed by the
20 secretary shall be a representative of employees recommended to
21 the secretary by the Kansas AFL-CIO.

22 (C) The panel shall annually review and approve the
23 schedules of maximum fees for such reasonably necessary
24 treatment, care and attendance to each injured employee to cure
25 and relieve the employee from the effects of the injury. All
26 fees and other charges paid for such treatment, care and
27 attendance, including treatment, care and attendance provided by
28 any health care provider, hospital or other entity providing
29 health care services, shall not exceed the amounts prescribed by
30 the schedules of maximum fees established under this section or
31 the amounts authorized pursuant to the provisions and review
32 procedures prescribed by the schedules for exceptional cases. A
33 health care provider, hospital or other entity providing health
34 care services shall be paid either such health care provider,
35 hospital or other entity's usual charge for the treatment, care

1 and attendance or the maximum fees as set forth in the applicable
2 schedule, whichever is less. In reviewing and approving the
3 schedules of maximum fees, the panel shall consider the
4 following:

5 (i) The levels of fees for similar treatment, care and
6 attendance imposed by other health care programs or third-party
7 payors in the locality in which such treatment or services are
8 rendered;

9 (ii) The impact upon cost to employers for providing a level
10 of fees for treatment, care and attendance which will ensure the
11 availability of treatment, care and attendance required for
12 injured employees;

13 (iii) The potential change in workers compensation insurance
14 premiums or costs attributable to the level of treatment, care
15 and attendance provided; and

16 (iv) The financial impact of the schedule of maximum fees
17 upon health care providers and health care facilities and its
18 effect upon their ability to make available to employees such
19 reasonably necessary treatment, care and attendance to each
20 injured employee to cure and relieve the employee from the
21 effects of the injury.

22 (D) Members of the advisory panel attending meetings of the
23 advisory panel, or attending a subcommittee of the advisory panel
24 authorized by the advisory panel, shall be paid compensation,
25 subsistence allowances, mileage and other expenses as provided in
26 K.S.A. 75-3223 and amendments thereto.

27 (4) Any contract with or any billing or charge by any health
28 care provider, hospital, person, or institution to any patient
29 for services rendered in connection with injuries covered by the
30 workers compensation act or a fee schedule adopted under this
31 section, which are or may be in excess of or not in accordance
32 with such fee schedule are unlawful, void and unenforceable as a
33 debt.

34 (5) The director shall have jurisdiction to hear and
35 determine all disputes as to such charges and interest due

1 thereon and shall prescribe procedural rules to be followed by
2 the parties to such disputes. In the event of any controversy
3 arising under this section, payments shall not be delayed for any
4 amounts not in dispute or controversy. Acceptance by any provider
5 of services of a payment amount under this section which is less
6 than the full amount charged for the services, shall not affect
7 the right to have a review of the claim for the outstanding or
8 remaining amounts.

9 (6) If the director finds, after utilization review and peer
10 review, that a health care provider or health care facility has
11 made excessive charges or provided or ordered unjustified
12 treatment, services, hospitalization or visits, the health care
13 provider or health care facility shall not receive payment
14 pursuant to this section from an insurance carrier, employer or
15 employee for the excessive fees or unjustified treatment,
16 hospitalization or visits and such health care provider or health
17 care facility shall repay any such fees or charges collected
18 therefor.

19 (7) The director shall develop and implement, or contract
20 with a qualified entity to develop and implement, utilization
21 review and peer review procedures relating to the services
22 rendered by a health care provider, which services are paid for
23 in whole or in part pursuant to this section. The director may
24 contract with a private foundation or organization to provide
25 utilization review, as appropriate, of entities providing health
26 care services pursuant to this section.

27 (8) By accepting payment pursuant to this section for
28 treatment or services rendered to an injured employee, a health
29 care provider or health care facility shall be deemed to consent
30 to submitting all necessary records to substantiate the nature
31 and necessity of the service or charge and other information
32 concerning such treatment to utilization review and peer review
33 under this section. Such health care provider shall comply with
34 any decision of the director pursuant to subsection (a)(9).

35 (9) If it is determined by a peer review committee that a

1 health care provider improperly overutilized or otherwise
2 rendered or ordered unjustified medical treatment or services or
3 that the fees for such treatment or services were excessive, the
4 director may order the health care provider to show cause why the
5 health care provider should not be required to repay the amount
6 which was paid for rendering or ordering such treatment or
7 services and shall provide the health care provider a hearing
8 thereon if requested. If a hearing is not requested within 30
9 days of receipt of the order and the director decides to proceed
10 with the matter, a hearing shall be conducted and if a prima
11 facie case is established a final order shall be issued by the
12 director. If the final order is adverse to the health care
13 provider, the director shall provide a report to the licensing
14 board of the health care provider with full documentation of any
15 such determination, except that no such report shall be provided
16 until after judicial review if the order is appealed. Any order
17 of the director under this section shall be subject to review in
18 accordance with the act for judicial review and civil enforcement
19 of agency actions in the district court for Shawnee county.

20 (10) Except as provided by K.S.A. 60-437 and amendments
21 thereto, all reports, information, statements, memoranda,
22 proceedings, findings and records submitted to the director for
23 the purposes of this section, including any records of peer
24 review committees, shall be privileged and shall not be subject
25 to discovery, subpoena, or other means of legal compulsion for
26 release to any person or entity and shall not be admissible in
27 evidence in any judicial or administrative proceeding, except
28 those authorized pursuant to this section.

29 (11) A health care provider or health care facility may not
30 improperly charge or overcharge a workers compensation insurer or
31 charge for services which were not provided, for the purpose of
32 obtaining additional payment.

33 (12) Any violation of the provisions of this section which
34 are willful or which demonstrate a pattern of improperly charging
35 or overcharging workers compensation insurers constitute grounds

1 for the director to impose a civil fine not to exceed \$5,000. Any
2 civil fine imposed under this section shall be subject to review
3 in accordance with the act for judicial review and civil
4 enforcement of agency actions in the district court for Shawnee
5 county. All moneys received for civil fines imposed under this
6 section shall be deposited in the state treasury to the credit of
7 the workers compensation fund.

8 (b) Any physician health care provider, nurse, medical
9 supply establishment, surgical supply establishment, ambulance
10 service or hospital who accept the terms of the workers
11 compensation act by providing services or material thereunder
12 shall be bound by the fees approved by the director and no
13 injured employee or dependent of a deceased employee shall be
14 liable for any charges above the amounts approved by the
15 director. If the employer has knowledge of the injury and refuses
16 or neglects to reasonably provide the benefits required by this
17 section, the employee may provide the same for such employee, and
18 the employer shall be liable for such expenses subject to the
19 regulations adopted by the director. No judgment may be entered
20 by any district court in any action for the payment of an amount
21 for medical services or materials provided under the workers
22 compensation act and such action shall be stayed until final
23 adjudication of any claim for compensation for which an
24 application for hearing is filed with the director under K.S.A.
25 44-534 and amendments thereto. In the case of an action stayed
26 hereunder, any award of compensation shall require any amounts
27 payable for medical services or materials to be paid directly to
28 the provider thereof plus an amount of interest at the rate
29 provided by statute for judgments.

30 (c) If the services of the physician health care provider
31 furnished as provided in subsection (a) are not satisfactory to
32 the injured employee, the director may authorize the appointment
33 of some other physician health care provider subject to the
34 limitations set forth in this section and the rules and
35 regulations adopted by the director. Without application or

1 approval, an employee may consult a physician health care
2 provider of the employee's choice for the purpose of examination,
3 diagnosis or treatment, but the employer shall only be liable for
4 the fees and charges of such physician health care provider up to
5 a total amount of \$350.

6 (d) An injured employee whose injury or disability has been
7 established under the workers compensation act may rely, if done
8 in good faith, solely or partially on treatment by prayer or
9 spiritual means in accordance with the tenets of practice of a
10 church or religious denomination without suffering a loss of
11 benefits subject to the following conditions:

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

14 (2) the employee submits to all physical examinations
15 required by the workers compensation act;

16 (3) the cost of such treatment shall be paid by the employee
17 unless the employer or insurance carrier agrees to make such
18 payment;

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

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

25 (e) In any employment to which the workers compensation act
26 applies, the employer shall be liable to each employee who is
27 employed as a duly authorized law enforcement officer, ambulance
28 attendant, mobile intensive care technician, fireman or
29 firefighter, including any person who is serving on a volunteer
30 basis in such capacity, for all reasonable and necessary
31 preventive medical care and treatment for hepatitis to which such
32 employee is exposed under circumstances arising out of and in the
33 course of employment.

34 Sec. 4. K.S.A. 1989 Supp. 44-510c is hereby amended to read
35 as follows: 44-510c. Where death does not result from the injury,

1 compensation shall be paid as provided in K.S.A. 44-510 and
2 amendments thereto and as follows:

3 (a) (1) Where permanent total disability results from the
4 injury, weekly payments shall be made during the period of
5 permanent total disability in a sum equal to $66 \frac{2}{3}\%$ of the
6 average gross weekly wage of the injured employee, computed as
7 provided in K.S.A. 44-511 and amendments thereto, but in no case
8 less than \$25 per week nor more than the dollar amount nearest to
9 75% of the state's average weekly wage, determined as provided in
10 K.S.A. 44-511 and amendments thereto, per week. The payment of
11 compensation for permanent total disability shall continue for
12 the duration of such disability, subject to review and
13 modification as provided in K.S.A. 44-528 and amendments thereto.

14 (2) Permanent total disability exists when the employee, on
15 account of the injury, has been rendered completely and
16 permanently incapable of engaging in any type of substantial and
17 gainful employment. Loss of both eyes, both hands, both arms,
18 both feet, or both legs, or any combination thereof, shall, in
19 the absence of proof to the contrary, constitute a permanent
20 total disability. Substantially total paralysis, or incurable
21 imbecility or insanity, resulting from injury independent of all
22 other causes, shall constitute permanent total disability. In all
23 other cases permanent total disability shall be determined in
24 accordance with the facts.

25 (b) (1) Where temporary total disability results from the
26 injury, no compensation shall be paid during the first week of
27 disability, except that provided in K.S.A. 44-510 and amendments
28 thereto, unless the temporary total disability exists for three
29 consecutive weeks, in which case compensation shall be paid for
30 the first week of such disability. Thereafter weekly payments
31 shall be made during such temporary total disability, in a sum
32 equal to $66 \frac{2}{3}\%$ of the average gross weekly wage of the injured
33 employee, computed as provided in K.S.A. 44-511 and amendments
34 thereto, but in no case less than \$25 per week nor more than the
35 dollar amount nearest to 75% of the state's average weekly wage,

1 determined as provided in K.S.A. 44-511 and amendments thereto,
2 per week. The payment of compensation for temporary total
3 disability shall continue for the duration of any such
4 disability, subject to review and modification as provided in
5 K.S.A. 44-528 and amendments thereto.

6 (2) Temporary total disability exists when the employee, on
7 account of the injury, has been rendered completely and
8 temporarily incapable of engaging in any type of substantial and
9 gainful employment.

10 (3) Where no award has been entered by the director, a
11 return by the employee to any type of substantial and gainful
12 employment or a release by a treating physician health care
13 provider or examining physician health care provider, who is not
14 regularly employed or retained by the employer, to return to any
15 such employment, shall suspend the employee's right to the
16 payment of temporary total disability compensation, but shall not
17 affect any right the employee may have to compensation for
18 partial disability in accordance with K.S.A. 44-510d and 44-510e
19 and amendments thereto.

20 (c) When any permanent total disability or temporary total
21 disability is followed by partial disability, compensation shall
22 be paid as provided in K.S.A. 44-510d and 44-510e and amendments
23 thereto.

24 Sec. 5. K.S.A. 1989 Supp. 44-510e is hereby amended to read
25 as follows: 44-510e. (a) (1) If the employer and the employee are
26 unable to agree upon the amount of compensation to be paid in the
27 case of injury not covered by the schedule in K.S.A. 44-510d and
28 amendments thereto, the amount of compensation shall be settled
29 according to the provisions of the workers compensation act as in
30 other cases of disagreement, except that in case of temporary or
31 permanent partial general disability not covered by such
32 schedule, the employee shall receive weekly compensation as
33 determined in this subsection during such period of temporary or
34 permanent partial general disability not exceeding a maximum of
35 415 weeks. Weekly compensation for temporary partial general

1-16

1 disability shall be 66 2/3% of the difference between the average
2 gross weekly wage that the employee was earning prior to such
3 injury as provided in the workers compensation act and the amount
4 the employee is actually earning after such injury in any type of
5 employment, except that in no case shall such weekly compensation
6 exceed the maximum as provided for in K.S.A. 44-510c and
7 amendments thereto. Permanent partial general disability exists
8 when the employee is disabled in a manner which is partial in
9 character and permanent in quality and which is not covered by
10 the schedule in K.S.A. 44-510d and amendments thereto. The extent
11 of permanent partial general disability shall be the extent,
12 expressed as a percentage, to which the ability of the employee
13 to perform work in the open labor market and to earn comparable
14 wages has been reduced, taking into consideration the employee's
15 education, training, experience and capacity for rehabilitation,
16 except that in any event the extent of permanent partial general
17 disability shall not be less than percentage of functional
18 impairment. Functional impairment means the extent, expressed as
19 a percentage, of the loss of a portion of the total physiological
20 capabilities of the human body as established by competent
21 medical evidence.

22 (2) A health care provider's evaluation of the extent of
23 permanent impairment shall be prepared in substantial compliance
24 with the "Guides to the Evaluation of Permanent Impairment",
25 published by the American medical association (hereinafter
26 referred to as the AMA guides), the guidelines established by the
27 American academy of orthopaedic surgeons, or any other recognized
28 medical book or guide which is in published form when the
29 examination is conducted. If the third edition of the AMA guides
30 is used, it shall be used to rate permanent impairment as a
31 result of injuries occurring on or after January 1, 1989.
32 Revisions of the AMA guides, the guidelines established by the
33 American academy of orthopaedic surgeons or any other recognized
34 medical book or guide which is published on or after January 1,
35 1989, shall not be used as the basis of a physician's evaluation

1 until the January 1 following the year of publication of the
2 revision of such medical book or guide. For injuries occurring
3 prior to January 1, 1989, which are evaluated by a health care
4 provider using the first or second edition of the AMA guides, the
5 following shall apply: (A) For injuries occurring during the
6 period from July 1, 1978, through October 31, 1984, the first
7 edition of the AMA guides shall be used; and (B) for injuries
8 occurring during the period from November 1, 1984, through
9 December 31, 1988, the second edition of the AMA guides shall be
10 used. Nothing in this section shall be construed to prevent the
11 presentation of other health care provider opinions or guides for
12 the purpose of establishing that the degree of permanent
13 impairment to which the employee would be entitled to would be
14 more or less than the entitlement indicated in the AMA guides,
15 the American academy of orthopaedic surgeons guides, or any other
16 recognized medical book or guide.

17 (3) There shall be a presumption that the employee has no
18 work disability if the employee engages in any work for wages
19 comparable to the average gross weekly wage that the employee was
20 earning at the time of the injury. The amount of weekly
21 compensation for permanent partial general disability shall be
22 determined: ~~(1)~~ (A) By multiplying the average gross weekly wage
23 of the worker prior to such injury by the percentage of permanent
24 partial general disability as determined under this subsection;
25 and ~~(2)~~ (B) by then multiplying the result so obtained by
26 66 2/3%. The amount of weekly compensation for permanent partial
27 general disability so determined shall in no case exceed the
28 maximum as provided for in K.S.A. 44-510c and amendments thereto.
29 If there is an award of permanent disability as a result of the
30 compensable injury, there shall be a presumption that disability
31 existed immediately after such injury. In any case of permanent
32 partial disability under this section, the employee shall be paid
33 compensation for not to exceed 415 weeks following the date of
34 such injury, subject to review and modification as provided in
35 K.S.A. 44-528 and amendments thereto.

1 (b) If an employee has received an injury for which
2 compensation is being paid, and the employee's death is caused by
3 other and independent causes, any payment of compensation already
4 due the employee at the time of death and then unpaid shall be
5 paid to the employee's dependents directly or to the employee's
6 legal representatives if the employee left no dependent, but the
7 liability of the employer for the payments of compensation not
8 yet due at the time of the death of such employee shall cease and
9 be abrogated by the employee's death.

10 (c) The total amount of compensation that may be allowed or
11 awarded an injured employee for all injuries received in any one
12 accident shall in no event exceed the compensation which would be
13 payable under the workers compensation act for permanent total
14 disability resulting from such accident.

15 (d) Where a minor employee or a minor employee's dependents
16 are entitled to compensation under the workers compensation act,
17 such compensation shall be exclusive of all other remedies or
18 causes of action for such injury or death, and no claim or cause
19 of action against the employer shall inure or accrue to or exist
20 in favor of the parent or parents of such minor employee on
21 account of any damage resulting to such parent or parents on
22 account of the loss of earnings or loss of service of such minor
23 employee.

24 (e) In any case of injury to or death of a female employee,
25 where the female employee or her dependents are entitled to
26 compensation under the workers compensation act, such
27 compensation shall be exclusive of all other remedies or causes
28 of action for such injury or death, and no claim or action shall
29 inure, accrue to or exist in favor of the surviving husband or
30 any relative or next of kin of such female employee against such
31 employer on account of any damage resulting to such surviving
32 husband or any relative or next of kin on account of the loss of
33 earnings, services, or society of such female employee or on any
34 other account resulting from or growing out of the injury or
35 death of such female employee.

1 Sec. 6. K.S.A. 1989 Supp. 44-510g is hereby amended to read
2 as follows: 44-510g. (a) A primary purpose of the workers
3 compensation act shall be to restore to the injured employee the
4 ability to perform work in the open labor market and to earn
5 comparable wages, as determined pursuant to subsection (a) of
6 K.S.A. 44-510e and amendments thereto. To this end, the director
7 shall appoint, subject to the approval of the secretary, a
8 specialist in medical, physical and vocational rehabilitation,
9 who shall be referred to as the rehabilitation administrator. The
10 director shall appoint, subject to the approval of the secretary,
11 four assistant rehabilitation administrators. The rehabilitation
12 administrator and the assistant rehabilitation administrators
13 shall be in the classified service under the Kansas civil service
14 act. The rehabilitation administrator and the assistant
15 rehabilitation administrators, subject to the direction of the
16 rehabilitation administrator, shall: (1) Continuously study the
17 problems of physical and vocational rehabilitation; (2)
18 investigate and maintain a directory of all rehabilitation
19 facilities, public or private, in this state, and, where such
20 rehabilitation administrator determines necessary, in any other
21 state; and (3) be fully knowledgeable regarding the eligibility
22 requirements of all state, federal and other public medical,
23 physical and vocational rehabilitation facilities and benefits.
24 With respect to private facilities and agencies providing
25 medical, physical and vocational rehabilitation services,
26 including rehabilitation service programs provided directly by
27 employers, the director shall approve as qualified such
28 facilities, institutions, agencies, employer programs and
29 physicians health care providers as are capable of rendering
30 competent rehabilitation services. No such facility, institution,
31 agency or employer program shall be considered qualified unless
32 it is specifically equipped to provide rehabilitation services
33 for persons suffering from either some specialized type of
34 disability or some general type of disability within the field of
35 occupational injury or disease, and is staffed with trained and

1 qualified personnel and, with respect to medical and physical
2 rehabilitation, unless it is supervised by a physician health
3 care provider qualified to render such service. No physician
4 health care provider shall be considered qualified unless such
5 physician health care provider has had such experience and
6 training as the director may deem necessary.

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

12 (c) An employee who has suffered an injury shall be entitled
13 to prompt medical and physical rehabilitation services as may be
14 reasonably necessary to restore to such employee the ability to
15 perform work in the open labor market and to earn comparable
16 wages, as determined pursuant to subsection (a) of K.S.A. 44-510e
17 and amendments thereto, and as provided in this section.

18 (d) When as a result of an injury or occupational disease
19 which is compensable under the workers compensation act, the
20 employee is unable (1) to perform work for the same employer at a
21 comparable wage with or without accommodation or (2) to enter the
22 open labor market to perform work for which such employee has
23 previous training, education, qualifications or experience and
24 earn a comparable wage, such employee shall be entitled to such
25 vocational rehabilitation services, including retraining and job
26 placement, as may be reasonably necessary to restore to such
27 employee the ability to perform work in the open labor market and
28 to earn comparable wages, as determined pursuant to subsection
29 (a) of K.S.A. 44-510e and amendments thereto, and as provided in
30 this section.

31 (e) (1) If the employee has remained off work for 90 days or
32 if it is apparent to the director the employee requires
33 vocational rehabilitation services and, in either case, if
34 approved rehabilitation services are not voluntarily furnished to
35 the employee by the employer, the director, on such director's

1 own motion or upon application of any party, may refer the
2 employee to a qualified public agency, if the employee is
3 eligible, or private agency or facility, or the employer's
4 rehabilitation service program, if qualified, for evaluation
5 assessment and for a report of the practicability of, need for,
6 and kind of service, treatment, training or rehabilitation which
7 is or may be necessary and appropriate to render such employee
8 able to perform work in the open labor market and to earn
9 comparable wages, as determined pursuant to subsection (a) of
10 K.S.A. 44-510e and amendments thereto. The costs of such
11 evaluation assessment and report shall be at the expense of the
12 employer. Each report shall contain a rehabilitation plan which
13 shall adhere to the following priority listing of rehabilitation
14 goals:

15 (A) The first priority is to return the employee to the same
16 work for the same employer;

17 (B) the second priority is to return the employee to the
18 same work, with accommodation, for the same employer;

19 (C) the third priority is to return the employee to other
20 work, with or without accommodation, for the same employer;

21 (D) the fourth priority is to return the employee to the
22 same work for another employer;

23 (E) the fifth priority is to return the employee to other
24 work for another employer; and

25 (F) the sixth priority is to provide vocational
26 rehabilitation, reeducation and training.

27 (2) Within 50 days after such referral, the report shall be
28 submitted to and reviewed by the rehabilitation administrator and
29 copies shall be furnished to each party. If all parties do not
30 agree with the report, the rehabilitation administrator shall
31 confer with the rehabilitation service provider, the employee and
32 the employer to review the evaluation assessment and the proposed
33 rehabilitation plan in the report. The rehabilitation
34 administrator shall ensure the evaluation assessment and the
35 rehabilitation plan are objective and reasonable and the

1-22

1 rehabilitation goal is reasonably obtainable. Within 20 days
2 after the initial review of the report, the rehabilitation
3 administrator shall deliver copies of the report, together with
4 the rehabilitation administrator's recommendations and any
5 revisions of or objections to the rehabilitation plan, to each
6 party, to the director and to the assigned administrative law
7 judge, if there is one. Within 10 days after receipt of such
8 report, any party may request a hearing before the director on
9 any matter contained in the report or any such recommendations or
10 revisions. After affording the parties an opportunity to be heard
11 and present evidence, the director:

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

15 (B) may order the employer to pay temporary total disability
16 compensation, computed as provided in K.S.A. 44-510c and
17 amendments thereto, or temporary partial disability compensation,
18 computed as provided in K.S.A. 44-510e and amendments thereto,
19 during the period of rehabilitation ~~evaluation~~ assessment and
20 continuing through the date the rehabilitation plan is delivered
21 to the director as provided in subsection (e)(2). Temporary total
22 or temporary partial disability compensation paid solely because
23 of involvement in the rehabilitation ~~evaluation~~ assessment
24 process shall not be payable for more than 70 days from the date
25 of the ~~evaluation~~ assessment, except such temporary total or
26 temporary partial disability compensation may be continued by the
27 director for an additional period of not more than 30 days if
28 circumstances outside the control of the employee prevents
29 completion of the ~~evaluation~~ assessment or the formulation of the
30 rehabilitation plan;

31 (C) where vocational rehabilitation, reeducation or training
32 is recommended in the report, or is deemed necessary by the
33 director to restore to the employee the ability to perform work
34 in the open labor market and to earn comparable wages, as
35 determined pursuant to subsection (a) of K.S.A. 44-510e and

1 amendments thereto, may direct the employee to the appropriate
2 federal, state or other public facility or agency where such
3 services will or may be provided at no cost to the employer,
4 except as otherwise provided in this section, or, upon the
5 request of the employer, to a qualified rehabilitation service
6 program provided directly by the employer; and

7 (D) if the employee is not eligible for such vocational
8 rehabilitation, reeducation or training through any such state,
9 federal or other public facility or agency, or where such
10 services through such facilities or agencies are not available to
11 the employee within a reasonable period of time, may order such
12 services be provided at the expense of the employer by any
13 qualified private agency or facility in this state or any state
14 contiguous to this state or by a qualified rehabilitation service
15 program provided directly by the employer.

16 (3) Any vocational rehabilitation, reeducation or training
17 to be provided at the expense of the employer under subsection
18 (e)(2) shall not extend for a period of more than 36 weeks,
19 except, in extremely unusual cases, after a hearing and the
20 presentation of evidence, the director, by special order, may
21 extend the period for not more than an additional 36 weeks. The
22 employer shall have a right to appeal to the district court any
23 such special order by the director for any extension of the
24 initial thirty-six-week period, within the time and in the manner
25 provided in K.S.A. 44-556 and amendments thereto and any such
26 special order shall be stayed until the district court has
27 determined the appeal. There shall be no right of appeal to the
28 Kansas supreme court or court of appeals from a judgment of the
29 district court sustaining or overruling any such special order of
30 the director.

31 (f) Where vocational rehabilitation, reeducation or training
32 is to be furnished at the expense of the employer under this
33 section, and such services require that the employee reside at or
34 near a facility or institution, away from the employee's
35 customary county of residence, either in or out of the state of

1 Kansas, the reasonable costs of the employee's board, lodging and
2 travel, not to exceed a maximum total of \$3,500 for any
3 thirty-six-week period, shall be paid by the employer, except, in
4 unusual cases where, after a hearing and the presentation of
5 evidence the director finds the costs are clearly reasonable and
6 necessary, the director may require by special order that the
7 employer pay an additional amount for the costs of the employee's
8 board, lodging and travel of not more than \$2,000.

9 (g) The employer shall pay temporary total disability
10 compensation during any period of vocational rehabilitation,
11 reeducation or training, computed as provided in K.S.A. 44-510c
12 and amendments thereto, but the employer shall receive credit for
13 any weekly, monthly or other monetary payments made to the
14 employee or such employee's family by any state, federal or other
15 public agency during any such period, exclusive of any such
16 payments for the board, lodging and travel expenses of the
17 employee. Subject to a maximum of 26 weeks, the number of weeks
18 during which temporary total disability compensation is paid
19 during vocational rehabilitation, reeducation or training shall
20 not be deducted from the maximum number of weeks available for
21 the payment of disability compensation under the schedule
22 provided in K.S.A. 44-510d and amendments thereto.

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

33 (i) Whenever the director determines there is a reasonable
34 probability that with appropriate medical, physical or vocational
35 rehabilitation, reeducation or training, a person, who is

1 entitled to compensation for permanent total disability, partial
2 disability or any other disability under the workers compensation
3 act, may be rehabilitated to the extent such person can become
4 able to perform work in the open labor market and to earn
5 comparable wages, as determined pursuant to subsection (a) of
6 K.S.A. 44-510e and amendments thereto, and it is for the best
7 interests of such person to undertake such rehabilitation,
8 reeducation or training, if the injured employee without good
9 cause refuses to undertake the rehabilitation, educational or
10 training program determined by the director to be suitable for
11 such employee or refuses to be evaluated under the provisions of
12 subsection (e) and the refusal is not due to the employee's
13 physical or mental ability to do so, the employee shall be
14 considered as having elected not to participate in such
15 rehabilitation, reeducation or training and the director may
16 suspend the payment of any disability compensation until the
17 employee consents to undertake such program or to be so
18 evaluated. The director may reduce the disability compensation
19 otherwise payable if any such refusal persists for a period in
20 excess of 90 days, except disability compensation shall not be
21 reduced to less than that payable for permanent partial
22 disability in accordance with K.S.A. 44-510d and amendments
23 thereto or for permanent partial general disability for
24 functional impairment in accordance with K.S.A. 44-510e and
25 amendments thereto.

26 (j) At such time as any medical, physical or vocational
27 rehabilitation, reeducation or training has been completed under
28 this section, the employer shall have the right, by the filing of
29 an application with the director, to seek a modification of any
30 award which has been rendered granting any compensation to the
31 employee for any disability. Upon at least 20 days' notice by
32 registered mail to all parties, the director shall set the
33 application for hearing and the parties shall present all
34 material and relevant evidence. In the event the director
35 determines the employee is rehabilitated so such employee is able

1-26

1 to perform work in the open labor market and to earn comparable
2 wages, as determined pursuant to subsection (a) of K.S.A. 44-510e
3 and amendments thereto, the director shall modify any award of
4 compensation or, if no such award has been made, the director
5 shall make an award to reflect only such disability, if any, as
6 exists at the conclusion of such rehabilitation. Any award of
7 partial disability, or modification of an existing award, made
8 pursuant to this subsection (j) shall be subject to the
9 provisions of K.S.A. 44-510d and 44-510e and amendments thereto.

10 (k) For any week with respect to which the employee is
11 receiving unemployment compensation benefits under the employment
12 security law or any other unemployment compensation law of any
13 other state or a similar federal law, no temporary total
14 disability compensation or temporary partial disability
15 compensation shall be payable under this section.

16 Sec. 7. K.S.A. 1989 Supp. 44-512a is hereby amended to read
17 as follows: 44-512a. (a) In the event any compensation, including
18 medical compensation, which has been awarded under the workers
19 compensation act, is not paid when due to the person, firm or
20 corporation entitled thereto, the employee shall be entitled to a
21 civil penalty, to be set by the director and assessed against the
22 employer or insurance carrier liable for such compensation in an
23 amount of not more than \$100 per week for each week any
24 disability compensation is past due and in an amount for each
25 past due medical bill equal to the larger of either the sum of
26 \$25 ~~for each~~ or the sum equal to 10% of the amount which is past
27 due on the medical bill, if: (1) Service of written demand for
28 payment, setting forth with particularity the items of disability
29 and medical compensation claimed to be unpaid and past due, has
30 been made personally or by registered mail on the employer or
31 insurance carrier liable for such compensation and its attorney
32 of record; and (2) payment of such demand is thereafter refused
33 or is not made within 20 days from the date of service of such
34 demand.

35 (b) After the service of such written demand, if the payment

1 of disability compensation or medical compensation set forth in
2 the written demand is not made within 20 days from the date of
3 service of such written demand, plus any civil penalty, as
4 provided in subsection (a), if such compensation was in fact past
5 due, then all past due compensation and any such penalties shall
6 become immediately due and payable. Service of written demand
7 shall be required only once after the final award. Subsequent
8 failures to pay compensation, including medical compensation,
9 shall entitle the employee to apply for the civil penalty without
10 demand. The employee may maintain an action in the district court
11 of the county where the cause of action arose for the collection
12 of such past due disability compensation and medical
13 compensation, any civil penalties due under this section and
14 reasonable attorney fees incurred in connection with the action.

15 (c) The remedies of execution, attachment, garnishment or
16 any other remedy or procedure for the collection of a debt now
17 provided by the laws of this state shall apply to such action and
18 also to all judgments entered under the provisions of K.S.A.
19 44-529 and amendments thereto, except that no exemption granted
20 by any law shall apply except the homestead exemption granted and
21 guaranteed by the constitution of this state.

22 Sec. 8. K.S.A. 44-515 is hereby amended to read as follows:
23 44-515. (a) After an employee sustains an injury, the employee
24 shall, upon request of the employer, submit to an examination at
25 any reasonable time and place by any one or more reputable
26 ~~physicians,--as--defined--in--K.S.A.--44-508--and--amendments--thereto~~
27 health care providers, selected by the employer, and shall so
28 submit to an examination thereafter at intervals during the
29 pendency of such employee's claim for compensation, upon the
30 request of the employer, but the employee shall not be required
31 to submit to an examination oftener than twice in any one (±)
32 month, unless required to do so in accordance with such orders as
33 may be made by the director. Any employee so submitting to an
34 examination or such employee's authorized representative shall
35 upon request be entitled to receive and shall have delivered to

1 such employee a copy of the physician's health care provider's
2 report of such examination within ~~fifteen-(15)~~ 15 days after such
3 examination, which report shall be identical to the report
4 submitted to the employer. If the employee is notified to submit
5 to an examination before any physician health care provider in
6 any town or city other than the residence of the employee at the
7 time that the employee received an injury, the employee shall not
8 be required to submit to an examination until such employee has
9 been furnished with sufficient funds to pay for transportation to
10 and from the place of examination at the rate prescribed for
11 compensation of state officers and employees under K.S.A.
12 75-3203a and amendments thereto, for each mile actually and
13 necessarily traveled to and from the place of examination, and in
14 addition the sum of ~~fifteen-dollars-(\$15)~~ \$15 per day for each
15 day or a part thereof that the employee was required to be away
16 from such employee's residence to defray such employee's board
17 and lodging and living expenses. The employee shall not be liable
18 for any fees or charge of any physicians health care provider
19 selected by the employer for making any examination of the
20 employee. The employer or the insurance carrier of the employer
21 of any workman employee making claim for compensation under the
22 workmen's workers compensation act shall be entitled to a copy of
23 the report of any physician health care provider who has examined
24 or treated the employee in regard to such claim upon written
25 request to the employee or the employee's attorney within ~~fifteen~~
26 ~~(15)~~ 15 days after such examination or treatment, which report
27 shall be identical to the report submitted to the employee or the
28 employee's attorney.

29 (b) If the employee requests, such employee shall be
30 entitled to have physicians health care providers of such
31 employee's own selection present at the time to participate in
32 such examination.

33 (c) Unless a report is furnished as provided in subsection
34 (a) and unless there be is a reasonable opportunity thereafter
35 for the physicians health care providers selected by the employee

1 to participate in the examination in the presence of the
 2 physicians health care providers selected by the employer, the
 3 physicians health care providers selected by the employer or
 4 employee shall not be permitted afterwards to give evidence of
 5 the condition of the employee at the time such examination was
 6 made.

7 Except as provided ~~herein~~ in this section, there shall be no
 8 disqualification or privilege preventing the furnishing of
 9 reports by or the testimony of any physician health care provider
 10 who actually makes an examination or treats an injured employee,
 11 prior to or after an injury.

12 Sec. 9. K.S.A. 44-516 is hereby amended to read as follows:
 13 44-516. In case of a dispute as to the injury, the director as
 14 ~~hereinafter--provided--may, at his,~~ in the director's discretion,
 15 or upon request of either party, may employ one or more neutral
 16 physicians health care providers, not exceeding three (3) in
 17 number, who shall be of good standing and ability, ~~whose duty--it~~
 18 ~~shall---be---to.~~ The health care providers shall make such
 19 examinations of the injured workman employee as the director may
 20 direct.

21 Sec. 10. K.S.A. 44-518 is hereby amended to read as follows:
 22 44-518. If the employee refuses to submit ~~himself--for~~ to an
 23 examination upon request of the employer as provided for in
 24 K.S.A. 44-515, and amendments thereto or if the employee or his
 25 physician--or--surgeon the employee's health care provider
 26 unnecessarily obstructs or prevents such examination by the
 27 physician-or-surgeon health care provider of the employer, the
 28 employee's right to payment of compensation shall be ~~and-remain~~
 29 suspended until ~~he--shall--submit~~ the employee submits to an
 30 examination and until such examination ~~shall-have-taken-place,~~
 31 and is completed. No compensation shall be payable under ~~this~~ the
 32 workers compensation act during the period of suspension.
 33 ~~Provided-further, That-in-the-event.~~ If the employee ~~shall-refuse~~
 34 refuses to submit himself to an examination while any proceedings
 35 are pending for the purpose of determining the amount of

1 compensation due, ~~said~~ such proceedings shall be dismissed upon
2 showing being made of ~~said~~ the refusal of ~~said~~ the employee to
3 submit ~~himself-for~~ to an examination.

4 Sec. 11. K.S.A. 44-519 is hereby amended to read as follows:
5 44-519. No report of any examination of any employee by a
6 ~~physician-or-surgeon, as hereinbefore in this act--provided--for,~~
7 nor--any health care provider, as provided for in the workers
8 compensation act and no certificate issued or given by the
9 ~~physician---or---surgeon~~ health care provider making such
10 examination, shall be competent evidence in any proceeding for
11 the determining or collection of compensation unless supported by
12 the testimony of such ~~physician-or-surgeon~~ health care provider,
13 if this testimony is admissible, ~~nor~~ and shall not be competent
14 evidence in any case where testimony of such ~~physician-or-surgeon~~
15 health care provider is not admissible.

16 Sec. 12. K.S.A. 1989 Supp. 44-528 is hereby amended to read
17 as follows: 44-528. (a) Any award or modification thereof agreed
18 upon by the parties, except lump-sum settlements approved by the
19 director or administrative law judge, whether the award provides
20 for compensation into the future or whether it does not, may be
21 reviewed by the director for good cause shown upon the
22 application of the employee, employer, dependent, insurance
23 carrier or any other interested party. In connection with such
24 review the director may appoint one or two ~~physicians~~ health care
25 providers to examine the employee and report to the director. The
26 director shall hear all competent evidence offered and if the
27 director finds that the award has been obtained by fraud or undue
28 influence, that the award was made without authority or as a
29 result of serious misconduct, that the award is excessive or
30 inadequate or that the functional impairment or work disability
31 of the employee has increased or diminished, the director may
32 modify such award, or reinstate a prior award, upon such terms as
33 may be just, by increasing or diminishing the compensation
34 subject to the limitations provided in the workers compensation
35 act.

1-31

1 (b) If the director finds that the employee has returned to
2 work for the same employer in whose employ the employee was
3 injured or for another employer and is earning or is capable of
4 earning the same or higher wages than the employee did at the
5 time of the accident, or is capable of gaining an income from any
6 trade or employment which is equal to or greater than the wages
7 the employee was earning at the time of the accident, or finds
8 that the employee has absented and continues to be absent so that
9 a reasonable examination cannot be made of the employee by a
10 physician health care provider selected by the employer, or has
11 departed beyond the boundaries of the United States, the director
12 may modify the award and reduce compensation or may cancel the
13 award and end the compensation.

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

17 (d) Any modification of an award under this section on the
18 basis that the functional impairment or work disability of the
19 employee has increased or diminished shall be effective as of the
20 date that the increase or diminishment actually occurred, except
21 that in no event shall the effective date of any such
22 modification be more than six months prior to the date the
23 application was made for review and modification under this
24 section.

25 Sec. 13. K.S.A. 44-551 is hereby amended to read as follows:
26 44-551. (a) The duties of the assistant directors of workers'
27 compensation shall include but not be limited to acting in the
28 capacity of an administrative law judge and the conducting of
29 director reviews, provided the director shall be the final
30 approving authority for such director reviews.

31 (b) (1) Administrative law judges shall have power to
32 administer oaths, certify official acts, take depositions, issue
33 subpoenas, compel the attendance of witnesses and the production
34 of books, accounts and papers, and under the direction of the
35 director, may conduct an investigation, inquiry, or hearing in

1 the same manner and with like effect as if done by the director.
2 All acts, findings, awards, decisions, rulings or modifications
3 of findings or awards made by an administrative law judge, shall
4 be subject to review and approval by the director upon written
5 request of any interested party within 10 days and if no such
6 request is made, then the director shall approve such actions,
7 findings, awards, decisions, rulings or modifications of findings
8 or awards of the administrative law judge. The filing of such a
9 request for review shall not be a prerequisite to judicial review
10 as provided for in K.S.A. 44-556 and amendments thereto.

11 (2) If an administrative law judge has entered a preliminary
12 award under K.S.A. 44-534a and amendments thereto, a director's
13 review shall not be conducted under this section unless it is
14 believed that the administrative law judge exceeded the authority
15 of administrative law judge in entering the preliminary award.
16 Director's orders on review of preliminary findings or
17 preliminary awards issued pursuant to K.S.A. 44-534a and
18 amendments thereto shall be issued within 30 days from the date
19 the review was submitted on the record where oral arguments were
20 not requested and within 30 days from the date oral arguments
21 were presented by the parties. Director's orders on any other
22 acts, findings, awards, decisions, rulings or modifications of
23 findings or awards made by an administrative law judge shall be
24 issued within 90 days from the date the review was submitted on
25 the record where oral arguments were not requested or within 90
26 days from the date oral arguments were presented by the parties.

27 (c) Each assistant director and each administrative law
28 judge or special administrative law judge shall be allowed all
29 reasonable and necessary expenses actually incurred while in the
30 actual discharge of official duties in administering the
31 workmen's compensation act, but such expenses shall be sworn to
32 by the person incurring the same and be approved by the
33 secretary.

34 (d) In case of emergency the director may appoint special
35 local administrative law judges and assign to them the

1 examination and hearing of any designated case or cases. Such
2 special local administrative law judges shall be attorneys and
3 admitted to practice law in the state of Kansas and shall, as to
4 all cases assigned to them, exercise the same powers as provided
5 by this section for the regular administrative law judges.
6 Special local administrative law judges shall receive a fee
7 commensurate with the services rendered as fixed by rules and
8 regulations adopted by the director. The fees prescribed by this
9 section prior to the effective date of this act shall be
10 effective until different fees are fixed by such rules and
11 regulations.

12 (e) All special local administrative law judge's fees and
13 expenses shall be taxed as cost in each case heard by such
14 special local administrative law judge and when collected shall
15 be paid directly to such special local administrative law judge
16 by the party charged with the payment of the same.

17 Sec. 14. K.S.A. 1989 Supp. 44-556 is hereby amended to read
18 as follows: 44-556.. (a) Any action of the director pursuant to
19 the workers compensation act shall be subject to review in
20 accordance with the act for judicial review and civil enforcement
21 of agency actions. Such review shall be upon questions of law and
22 fact as presented and shown by a transcript of the evidence and
23 proceedings as presented, had and introduced before the director.
24 The venue of the action shall be the county where the cause of
25 action arose or the county mutually agreed upon by all of the
26 parties. Any such action shall have precedence over all other
27 hearings except those of like character, and shall be heard not
28 later than the first term of the district court after the appeal
29 has been perfected, and the court shall decide all such cases
30 within 60 days after submission. The appealing party shall notify
31 the director when judgment is issued by the court. If judgment is
32 not issued within 60 days of submission, ~~the-appealing-party~~
33 shall any party may notify the director to that effect. The
34 director will advise the judge to whom the case was submitted
35 that 60 days has elapsed since submission of the case and request

1 that a decision be rendered. If no decision is forthcoming within
2 30 days of such request by the director, the director will advise
3 the supreme court justice having jurisdiction over such judge of
4 all of the facts in regard to the review and the failure of the
5 judge to render a decision as required by this section.

6 (b) On any such review the district court shall have
7 jurisdiction to grant or refuse compensation, or to increase or
8 diminish any award of the director as justice may require. No
9 compensation shall be due or payable until the expiration of the
10 time for commencing an action for review and then the payment of
11 past due compensation awarded by the director shall not be
12 payable if, within such time a petition for review, has been
13 filed in accordance with the act for judicial review and civil
14 enforcement of agency actions. The right of review shall include
15 the right to make no payments of such compensation until the
16 review has been decided by the district court if the employer is
17 insured for workers compensation liability with an insurance
18 company authorized to do business in this state, if the employer
19 is maintaining membership in a qualified group-funded workers
20 compensation pool under K.S.A. 44-581 through 44-591 and
21 amendments thereto, if the employer is maintaining membership in
22 a group-funded pool under the Kansas municipal group-funded pool
23 act which includes workers compensation and employers' liability
24 under the workers compensation act, or if the employer is
25 currently approved by the director as a self-insurer and has
26 filed a bond with the district court in accordance with K.S.A.
27 44-530 and amendments thereto. Commencement of an action for
28 review shall not stay the payment of compensation due for the
29 ten-week period next preceding the director's decision and for
30 the period of time after the director's decision and prior to the
31 decision of the district court on review.

32 (c) If review of the decision of the district court is
33 sought pursuant to K.S.A. 77-623 and amendments thereto, the
34 compensation payable under the decision of the district court
35 shall not be stayed pending such review. Review of the decision

1 of the district court shall take precedence over other cases
2 except cases of the same character.

3 (d) If compensation, including medical benefits, temporary
4 total disability benefits or vocational rehabilitation benefits,
5 has been paid to the worker by the employer or the employer's
6 insurance carrier during the pendency of review by the district
7 court or by appellate courts and the amount of compensation
8 awarded by the director or the district court is reduced or
9 totally disallowed by the decision on the appeal or review, the
10 employer and the employer's insurance carrier, except as
11 otherwise provided in this section, shall be reimbursed from the
12 workers compensation fund established in K.S.A. 44-566a and
13 amendments thereto for all amounts of compensation so paid which
14 are in excess of the amount of compensation that the worker is
15 entitled to as determined by the final decision on review. The
16 director shall determine the amount of compensation paid by the
17 employer or insurance carrier which is to be reimbursed under
18 this subsection, and the director shall certify to the
19 commissioner of insurance the amount so determined. Upon receipt
20 of such certification, the commissioner of insurance shall cause
21 payment to be made to the employer or the employer's insurance
22 carrier in accordance therewith.

23 (e) If compensation, including medical benefits, temporary
24 total disability benefits or vocational rehabilitation benefits,
25 has been paid to the worker by the employer, the employer's
26 insurance carrier or the workers compensation fund during the
27 pendency of review by the district court or by appellate courts,
28 and the employer, the employer's insurance carrier or the workers
29 compensation fund, which was held liable for and ordered to pay
30 all or part of the amount of compensation awarded by the director
31 or the district court, is held not liable by the final decision
32 on the appeal or review for the compensation paid or is held
33 liable on such appeal or review to pay an amount of compensation
34 which is less than the amount paid pursuant to the award, then
35 the employer, employer's insurance carrier or workers

1 compensation fund shall be reimbursed by the party or parties
2 which were held liable on such appeal or review to pay the amount
3 of compensation to the worker that was erroneously ordered paid
4 by the director or district court. The director shall determine
5 the amount of compensation which is to be reimbursed to each
6 party under this subsection, if any, in accordance with the final
7 decision on the appeal or review and shall certify each such
8 amount to be reimbursed to the party required to pay the amount
9 or amounts of such reimbursement. Upon receipt of such
10 certification, the party required to make the reimbursement shall
11 pay the amount or amounts required to be paid in accordance with
12 such certification. No worker shall be required to make
13 reimbursement under this subsection or subsection (d).

14 (f) As used in subsections (d) and (e), "employers'
15 insurance carrier" includes any qualified group-funded workers
16 compensation pool under K.S.A. 44-581 through 44-591 and
17 amendments thereto or a group-funded pool under the Kansas
18 municipal group-funded pool act which includes workers
19 compensation and employers' liability under the workers
20 compensation act.

21 (g) If any temporary or permanent partial disability or
22 temporary or permanent total disability benefits have been paid
23 to the worker by the employer or the employer's insurance carrier
24 during the pendency of review by the district court or by
25 appellate courts and the amount of compensation awarded for such
26 benefits by the director or the district court is reduced by the
27 decision on the appeal or review and the balance of compensation
28 due the worker exceeds the amount of such reduction, the employer
29 and the employer's insurance carrier shall receive a credit which
30 shall be applied as provided in this subsection for all amounts
31 of such benefits which are in excess of the amount of such
32 benefits that the worker is entitled to as determined by the
33 final decision on review or appeal. If a lump-sum amount of
34 compensation is due and owing as a result of the decision of the
35 district court, the credit under this subsection shall be applied

1 first against such lump-sum amount. If there is no such lump-sum
 2 amount or if there is any remaining credit after a credit has
 3 been applied to a lump-sum amount due and owing, such credit
 4 shall be applied against the last compensation payments which are
 5 payable for a period of time after the final decision on review
 6 or appeal so that the worker continues to receive compensation
 7 payments after such final decision until no further compensation
 8 is payable after the credit has been satisfied. The credit
 9 allowed under this subsection shall not be applied so as to stop
 10 or reduce benefit payments after such final decision, but shall
 11 be used to reduce the period of time over which benefit payments
 12 are payable after such final decision.

13 Sec. 15. K.S.A. 44-5a04 is hereby amended to read as
 14 follows: 44-5a04. (a) Except as hereinafter otherwise provided in
 15 this act "disablement" means the event of an employee or--workman
 16 becoming actually incapacitated, partially or totally, because of
 17 an occupational disease, from performing his the employee's work
 18 in the last occupation in which injuriously exposed to the
 19 hazards of such disease, and "disability" means the state of
 20 being so incapacitated~~:-Provided~~7.

21 (b) The director may cancel the award and end the
 22 compensation if the director shall-find-that-the-workman finds
 23 that the employee (1) has returned to work for the same employer
 24 in whose employ he the employee was disabled or for another
 25 employer and is capable of earning the same or higher wages than
 26 he the employee did at the time of the disablement, or is capable
 27 of gaining an income from any trade or employment which is equal
 28 to or greater than the wages he the employee was earning at the
 29 time of the disablement~~7-or-shall-find~~;

30 (2) finds that the ~~workman-has-absented-himself~~ employee is
 31 absent and continues to be absent himself so that a reasonable
 32 examination cannot be made of him the employee by a ~~physician-or~~
 33 surgeon health care provider selected by the employer~~7~~; or

34 (3) has departed beyond the boundaries of the United States~~7~~
 35 the-director-may-cancel-the-award-and-end-the-compensation.

1 Sec. 16. K.S.A. 44-5a18 is hereby amended to read as
2 follows: 44-5a18. Upon the filing or service of a claim for
3 compensation for death from an occupational disease where an
4 autopsy is necessary to accurately and scientifically ascertain
5 and determine the cause of death, such autopsy shall be ordered
6 by the director ~~of workers' compensation~~. Such autopsy shall be
7 made under the supervision of a medical examiner appointed by
8 ~~said the~~ the director. ~~Such~~ The medical examiner shall be a ~~duty~~
9 ~~licensed physician,~~ health care provider who is a specialist in
10 such examinations ~~and~~. The medical examiner shall perform or
11 attend such autopsy and shall certify ~~his--or--her~~ the medical
12 examiner's findings in a report of ~~such the~~ the autopsy. ~~Such~~ The
13 report of autopsy shall be filed with the director and shall be a
14 public record. The employer and claimants shall be given
15 reasonable notice of such autopsy and each shall have the right
16 to have a physician health care provider of ~~his--or--her~~ the
17 employer or claimant's own choosing present at the time. The
18 director also may exercise such authority on ~~his--or--her~~ the
19 director's own motion or on application made to the director at
20 any time, upon the presentation of facts showing that a
21 controversy may exist in regard to the cause of death or the
22 existence of any occupational disease.

23 Sec. 17. K.S.A. 44-515, 44-516, 44-518, 44-519, 44-551,
24 44-5a04 and 44-5a18 and K.S.A. 1989 Supp. 44-501, 44-508, 44-510,
25 44-510c, 44-510e, 44-510g, 44-512a, 44-528 and 44-556 are hereby
26 repealed.

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