

Approved _____

Date

4-4-90

MINUTES OF THE House COMMITTEE ON Labor & Industry

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

9:08 a.m./p.m. on March 26, 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:

The meeting was called to order at 9:08 a.m. by Chairman Douville. Discussion continued on HB 3069. Chairman Douville explained there is a new version of the proposed Substitute for HB 3069, attachment #1, and the Revisor's office will be delivering copies in a few minutes.

Chairman Douville began by explaining some of the changes (referring to the original proposed Substitute for HB 3069):

- Page 13, lines 24-27: additional language to make it clear that employers and insurance carriers cannot engage a collection agency until after final adjudication.
- Page 14, line 2: protection provided for the health care provider in that interest is earned on any amounts due and payable.
- Page 16, lines 22-25: language inserted stating that a release to work may or may not be indicative of an employee's ability to work.
- lines 27-30: "any such employment" replaced by "substantial and gainful employment".
- Page 18, lines 2-31: remove the entire section.

Chairman Douville stated the Kansas Trial Lawyers Association thought this section was a problem and should be removed. Chairman Douville said he thought removing the section would be bad for labor but was willing to compromise and have it deleted.

Referring to the language on page 7, line 32, "accepted standards", Representative Patrick asked how utilization reviews can be done if there are no standards. He feels that removing this section is not in line with what Director Anderson has stated is necessary. Chairman Douville responded that he has talked with Director Anderson and he is not opposed to removing this section. The panel will have to determine the standards.

Representative Schauf stated the problem with AMA guidelines is the requirement for object proof. Representative O'Neal said that is not necessarily true as the AMA III allows for range of motion determinations. Citing the language on page 18, lines 25-31, he stated it is more liberal than current practice and should satisfy any objections.

Representative Hensley expressed concern over removing the entire section as he feels Director Anderson has asked for direction in administering the law.

- Page 33, line 18: notice to an employer only has to be given one time, even if several preliminary hearings are requested.
- line 33: "shall" replaced by "may".
- lines 34-35: strike the language "under K.S.A. 44-534 and amendments thereto".
- Page 34, lines 1-5: allows more latitude in paying temporary total disability.
- Page 35, lines 34-35 and page 36, lines 1-7: under present law no compensation is due until the Director issues the award. This change allows more latitude in paying temporary disability.
- lines 8-16: if there is no question about compensability of medical, then it is to be paid promptly.

Jim Wilson explained a further change on page 40, lines 5-9: this is to differentiate between the procedural remedy that applies to a case. This section allows an employer to take a credit from the lump sum or from future payments due. Also, on page 41, section (g), if the medical compensation is not in dispute then it is due and payable. Mr. Wilson suggested

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 9:08 a.m./~~a.m.~~^{p.m.} on March 26, 1990

that on page 16, lines 28-30: reinsert the language and make it subject to subsection (2).

Chairman Douville explained that on page 9 there is no specification for the terms of office for members of the advisory panel. Representative Buehler moved to amend proposed Sub. HB 3069 to stipulate 2 year terms for advisory panel members. Representative Flottman seconded the motion. The motion carried.

Representative Patrick moved to further amend the bill by having one member of the advisory panel rotate between a representative from the Kansas Chamber of Commerce and Industry and the Kansas Chapter of the National Federation of Independent Business. Representative Hensley seconded the motion. The motion carried.

Representative Flottman moved to reinsert the language on page 16, lines 28-30 and add "subject to the provisions of subsection (2)" and "any such" be replaced by "any type of substantial and gainful " and "examining physician" replaced by "health care provider". Representative Buehler seconded the motion. The motion carried.

Representative Schauf stated that her support for amendments to proposed Sub. HB 3069 does not imply her support for the bill.

Representative Buehler moved to replace "shall" with "may" on page 33, line 33 and to remove the language "under K.S.A. 44-534 and amendments thereto" on lines 34-35. Representative Lynch seconded the motion. The motion carried.

Representative Webb moved to include the following language on page 33, lines 17-19: "Such prior seven-day notice shall be required to be given to the employer only once in any case." Representative Cribbs seconded the motion. The motion carried.

Representative Webb moved that the language contained on page 34, lines 1-5 pertaining to temporary total disability be included in the bill. Representative Buehler seconded the motion. The motion carried.

Chairman Douville announced that discussion and committee action on HB 3069 would continue tomorrow, March 27, 1990 at 9:00 a.m. in room 526-S. The meeting adjourned at 9:58 a.m.

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 the provision of benefits
3 thereunder; amending K.S.A. 44-515, 44-516, 44-518, 44-519,
4 44-551, 44-5a04 and 44-5a18 and K.S.A. 1989 Supp. 44-501,
5 44-508, 44-510, 44-510c, 44-510e, 44-510g, 44-512a, 44-528,
6 44-534a and 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 as

1 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 physieian 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.

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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 or any billing or charge which any health
28 care provider, hospital, person, or institution enters into with
29 or makes to any patient for services rendered in connection with
30 injuries covered by the workers compensation act or a fee
31 schedule adopted under this section, which is or may be in excess
32 of or not in accordance with such act or fee schedule is
33 unlawful, void and unenforceable as a 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 services, hospitalization or visits and such health care provider
17 or health care facility shall repay any 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 is willful or which demonstrates a pattern of improperly charging
35 or overcharging workers compensation insurers constitutes 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 shall be filed in any court
21 by a health care provider or other provider of services under
22 this section for the payment of an amount for medical services or
23 materials provided under the workers compensation act and such
24 ~~action--shall--be--stayed~~ no other action to obtain or attempt to
25 obtain or collect such payment shall be taken by a health care
26 provider or other provider of services under this section,
27 including employing any collection service, until after final
28 adjudication of any claim for compensation for which an
29 application for hearing is filed with the director under K.S.A.
30 44-534 and amendments thereto. In the case of any such action
31 filed in a court prior to the date an application is filed under
32 K.S.A. 44-534 and amendments thereto, no judgment may be entered
33 in any such cause and the action shall be stayed until after the
34 final adjudication of the claim. In the case of an action stayed
35 hereunder, any award of compensation shall require any amounts

1 payable for medical services or materials to be paid directly to
2 the provider thereof plus an amount of interest at the rate
3 provided by statute for judgments. No period of time under any
4 statute of limitation, which applies to a cause of action barred
5 under this subsection, shall commence or continue to run until
6 final adjudication of the claim under the workers compensation
7 act.

8 (c) If the services of the physician health care provider
9 furnished as provided in subsection (a) are not satisfactory to
10 the injured employee, the director may authorize the appointment
11 of some other physician health care provider subject to the
12 limitations set forth in this section and the rules and
13 regulations adopted by the director. Without application or
14 approval, an employee may consult a physician health care
15 provider of the employee's choice for the purpose of examination,
16 diagnosis or treatment, but the employer shall only be liable for
17 the fees and charges of such physician health care provider up to
18 a total amount of \$350.

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

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

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

29 (3) the cost of such treatment shall be paid by the employee
30 unless the employer or insurance carrier agrees to make such
31 payment;

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

35 (5) the employer or insurance carrier that made an agreement

1 under paragraph (1) or (3) of this subsection may withdraw from
2 the agreement on 10 days' written notice.

3 (e) In any employment to which the workers compensation act
4 applies, the employer shall be liable to each employee who is
5 employed as a duly authorized law enforcement officer, ambulance
6 attendant, mobile intensive care technician, fireman or
7 firefighter, including any person who is serving on a volunteer
8 basis in such capacity, for all reasonable and necessary
9 preventive medical care and treatment for hepatitis to which such
10 employee is exposed under circumstances arising out of and in the
11 course of employment.

12 Sec. 4. K.S.A. 1989 Supp. 44-510c is hereby amended to read
13 as follows: 44-510c. Where death does not result from the injury,
14 compensation shall be paid as provided in K.S.A. 44-510 and
15 amendments thereto and as follows:

16 (a) (1) Where permanent total disability results from the
17 injury, weekly payments shall be made during the period of
18 permanent total disability in a sum equal to 66 2/3% of the
19 average gross weekly wage of the injured employee, computed as
20 provided in K.S.A. 44-511 and amendments thereto, but in no case
21 less than \$25 per week nor more than the dollar amount nearest to
22 75% of the state's average weekly wage, determined as provided in
23 K.S.A. 44-511 and amendments thereto, per week. The payment of
24 compensation for permanent total disability shall continue for
25 the duration of such disability, subject to review and
26 modification as provided in K.S.A. 44-528 and amendments thereto.

27 (2) Permanent total disability exists when the employee, on
28 account of the injury, has been rendered completely and
29 permanently incapable of engaging in any type of substantial and
30 gainful employment. Loss of both eyes, both hands, both arms,
31 both feet, or both legs, or any combination thereof, shall, in
32 the absence of proof to the contrary, constitute a permanent
33 total disability. Substantially total paralysis, or incurable
34 imbecility or insanity, resulting from injury independent of all
35 other causes, shall constitute permanent total disability. In all

1 other cases permanent total disability shall be determined in
2 accordance with the facts.

3 (b) (1) Where temporary total disability results from the
4 injury, no compensation shall be paid during the first week of
5 disability, except that provided in K.S.A. 44-510 and amendments
6 thereto, unless the temporary total disability exists for three
7 consecutive weeks, in which case compensation shall be paid for
8 the first week of such disability. Thereafter weekly payments
9 shall be made during such temporary total disability, in a sum
10 equal to 66 2/3% of the average gross weekly wage of the injured
11 employee, computed as provided in K.S.A. 44-511 and amendments
12 thereto, but in no case less than \$25 per week nor more than the
13 dollar amount nearest to 75% of the state's average weekly wage,
14 determined as provided in K.S.A. 44-511 and amendments thereto,
15 per week. The payment of compensation for temporary total
16 disability shall continue for the duration of any such
17 disability, subject to review and modification as provided in
18 K.S.A. 44-528 and amendments thereto.

19 (2) Temporary total disability exists when the employee, on
20 account of the injury, has been rendered completely and
21 temporarily incapable of engaging in any type of substantial and
22 gainful employment. A release issued by a health care provider
23 with temporary medical limitations for an employee may or may not
24 be determinative of the employee's actual ability to be engaged
25 in any type of substantial and gainful employment.

26 (3) Where no award has been entered by the director, a
27 return by the employee to any type of substantial and gainful
28 employment ~~or--a--release--by--a--treating--physician--or--examining~~ yellow
29 ~~physician,--who--is--not--regularly--employed--or--retained--by--the~~
30 ~~employer,--to--return--to--any--such--employment,~~ shall suspend the
31 employee's right to the payment of temporary total disability
32 compensation, but shall not affect any right the employee may
33 have to compensation for partial disability in accordance with
34 K.S.A. 44-510d and 44-510e and amendments thereto.

35 (c) When any permanent total disability or temporary total

1 disability is followed by partial disability, compensation shall
2 be paid as provided in K.S.A. 44-510d and 44-510e and amendments
3 thereto.

4 Sec. 5. K.S.A. 1989 Supp. 44-510e is hereby amended to read
5 as follows: 44-510e. (a) (1) If the employer and the employee are
6 unable to agree upon the amount of compensation to be paid in the
7 case of injury not covered by the schedule in K.S.A. 44-510d and
8 amendments thereto, the amount of compensation shall be settled
9 according to the provisions of the workers compensation act as in
10 other cases of disagreement, except that in case of temporary or
11 permanent partial general disability not covered by such
12 schedule, the employee shall receive weekly compensation as
13 determined in this subsection during such period of temporary or
14 permanent partial general disability not exceeding a maximum of
15 415 weeks. Weekly compensation for temporary partial general
16 disability shall be $66 \frac{2}{3}\%$ of the difference between the average
17 gross weekly wage that the employee was earning prior to such
18 injury as provided in the workers compensation act and the amount
19 the employee is actually earning after such injury in any type of
20 employment, except that in no case shall such weekly compensation
21 exceed the maximum as provided for in K.S.A. 44-510c and
22 amendments thereto. Permanent partial general disability exists
23 when the employee is disabled in a manner which is partial in
24 character and permanent in quality and which is not covered by
25 the schedule in K.S.A. 44-510d and amendments thereto. The extent
26 of permanent partial general disability shall be the extent,
27 expressed as a percentage, to which the ability of the employee
28 to perform work in the open labor market and to earn comparable
29 wages has been reduced, taking into consideration the employee's
30 education, training, experience and capacity for rehabilitation,
31 except that in any event the extent of permanent partial general
32 disability shall not be less than percentage of functional
33 impairment. Functional impairment means the extent, expressed as
34 a percentage, of the loss of a portion of the total physiological
35 capabilities of the human body as established by competent

1 medical evidence.

2 (2) A health care provider's evaluation of the extent of
3 permanent impairment shall be prepared in substantial compliance
4 with the "Guides to the Evaluation of Permanent Impairment",
5 published by the American medical association (hereinafter
6 referred to as the AMA guides), the guidelines established by the
7 American academy of orthopaedic surgeons, or any other recognized
8 medical book or guide which is in published form when the
9 examination is conducted. If the third edition of the AMA guides
10 is used, it shall be used to rate permanent impairment as a
11 result of injuries occurring on or after January 1, 1989.
12 Revisions of the AMA guides, the guidelines established by the
13 American academy of orthopaedic surgeons or any other recognized
14 medical book or guide which is published on or after January 1,
15 1989, shall not be used as the basis of a physician's evaluation
16 until the January 1 following the year of publication of the
17 revision of such medical book or guide. For injuries occurring
18 prior to January 1, 1989, which are evaluated by a health care
19 provider using the first or second edition of the AMA guides, the
20 following shall apply: (A) For injuries occurring during the
21 period from July 1, 1978, through October 31, 1984, the first
22 edition of the AMA guides shall be used; and (B) for injuries
23 occurring during the period from November 1, 1984, through
24 December 31, 1988, the second edition of the AMA guides shall be
25 used. Nothing in this section shall be construed to prevent the
26 presentation of other health care provider opinions or guides for
27 the purpose of establishing that the degree of permanent
28 impairment to which the employee would be entitled to would be
29 more or less than the entitlement indicated in the AMA guides,
30 the American academy of orthopaedic surgeons guides, or any other
31 recognized medical book or guide.

32 (3) There shall be a presumption that the employee has no
33 work disability if the employee engages in any work for wages
34 comparable to the average gross weekly wage that the employee was
35 earning at the time of the injury. The amount of weekly

1 compensation for permanent partial general disability shall be
2 determined: ~~(1)~~ (A) By multiplying the average gross weekly wage
3 of the worker prior to such injury by the percentage of permanent
4 partial general disability as determined under this subsection;
5 and ~~(2)~~ (B) by then multiplying the result so obtained by
6 66 2/3%. The amount of weekly compensation for permanent partial
7 general disability so determined shall in no case exceed the
8 maximum as provided for in K.S.A. 44-510c and amendments thereto.
9 If there is an award of permanent disability as a result of the
10 compensable injury, there shall be a presumption that disability
11 existed immediately after such injury. In any case of permanent
12 partial disability under this section, the employee shall be paid
13 compensation for not to exceed 415 weeks following the date of
14 such injury, subject to review and modification as provided in
15 K.S.A. 44-528 and amendments thereto.

16 (b) If an employee has received an injury for which
17 compensation is being paid, and the employee's death is caused by
18 other and independent causes, any payment of compensation already
19 due the employee at the time of death and then unpaid shall be
20 paid to the employee's dependents directly or to the employee's
21 legal representatives if the employee left no dependent, but the
22 liability of the employer for the payments of compensation not
23 yet due at the time of the death of such employee shall cease and
24 be abrogated by the employee's death.

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

30 (d) Where a minor employee or a minor employee's dependents
31 are entitled to compensation under the workers compensation act,
32 such compensation shall be exclusive of all other remedies or
33 causes of action for such injury or death, and no claim or cause
34 of action against the employer shall inure or accrue to or exist
35 in favor of the parent or parents of such minor employee on

1 account of any damage resulting to such parent or parents on
2 account of the loss of earnings or loss of service of such minor
3 employee.

4 (e) In any case of injury to or death of a female employee,
5 where the female employee or her dependents are entitled to
6 compensation under the workers compensation act, such
7 compensation shall be exclusive of all other remedies or causes
8 of action for such injury or death, and no claim or action shall
9 inure, accrue to or exist in favor of the surviving husband or
10 any relative or next of kin of such female employee against such
11 employer on account of any damage resulting to such surviving
12 husband or any relative or next of kin on account of the loss of
13 earnings, services, or society of such female employee or on any
14 other account resulting from or growing out of the injury or
15 death of such female employee.

16 Sec. 6. K.S.A. 1989 Supp. 44-510g is hereby amended to read
17 as follows: 44-510g. (a) A primary purpose of the workers
18 compensation act shall be to restore to the injured employee the
19 ability to perform work in the open labor market and to earn
20 comparable wages, as determined pursuant to subsection (a) of
21 K.S.A. 44-510e and amendments thereto. To this end, the director
22 shall appoint, subject to the approval of the secretary, a
23 specialist in medical, physical and vocational rehabilitation,
24 who shall be referred to as the rehabilitation administrator. The
25 director shall appoint, subject to the approval of the secretary,
26 four assistant rehabilitation administrators. The rehabilitation
27 administrator and the assistant rehabilitation administrators
28 shall be in the classified service under the Kansas civil service
29 act. The rehabilitation administrator and the assistant
30 rehabilitation administrators, subject to the direction of the
31 rehabilitation administrator, shall: (1) Continuously study the
32 problems of physical and vocational rehabilitation; (2)
33 investigate and maintain a directory of all rehabilitation
34 facilities, public or private, in this state, and, where such
35 rehabilitation administrator determines necessary, in any other

1 state; and (3) be fully knowledgeable regarding the eligibility
2 requirements of all state, federal and other public medical,
3 physical and vocational rehabilitation facilities and benefits.
4 With respect to private facilities and agencies providing
5 medical, physical and vocational rehabilitation services,
6 including rehabilitation service programs provided directly by
7 employers, the director shall approve as qualified such
8 facilities, institutions, agencies, employer programs and
9 physicians health care providers as are capable of rendering
10 competent rehabilitation services. No such facility, institution,
11 agency or employer program shall be considered qualified unless
12 it is specifically equipped to provide rehabilitation services
13 for persons suffering from either some specialized type of
14 disability or some general type of disability within the field of
15 occupational injury or disease, and is staffed with trained and
16 qualified personnel and, with respect to medical and physical
17 rehabilitation, unless it is supervised by a physician health
18 care provider qualified to render such service. No physician
19 health care provider shall be considered qualified unless such
20 physician health care provider has had such experience and
21 training as the director may deem necessary.

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

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

33 (d) When as a result of an injury or occupational disease
34 which is compensable under the workers compensation act, the
35 employee is unable (1) to perform work for the same employer at a

1 comparable wage with or without accommodation or (2) to enter the
2 open labor market to perform work for which such employee has
3 previous training, education, qualifications or experience and
4 earn a comparable wage, such employee shall be entitled to such
5 vocational rehabilitation services, including retraining and job
6 placement, as may be reasonably necessary to restore to such
7 employee the ability to perform work in the open labor market and
8 to earn comparable wages, as determined pursuant to subsection
9 (a) of K.S.A. 44-510e and amendments thereto, and as provided in
10 this section.

11 (e) (1) If the employee has remained off work for 90 days or
12 if it is apparent to the director the employee requires
13 vocational rehabilitation services and, in either case, if
14 approved rehabilitation services are not voluntarily furnished to
15 the employee by the employer, the director, on such director's
16 own motion or upon application of any party, may refer the
17 employee to a qualified public agency, if the employee is
18 eligible, or private agency or facility, or the employer's
19 rehabilitation service program, if qualified, for evaluation
20 assessment and for a report of the practicability of, need for,
21 and kind of service, treatment, training or rehabilitation which
22 is or may be necessary and appropriate to render such employee
23 able to perform work in the open labor market and to earn
24 comparable wages, as determined pursuant to subsection (a) of
25 K.S.A. 44-510e and amendments thereto. The costs of such
26 evaluation assessment and report shall be at the expense of the
27 employer. Each report shall contain a rehabilitation plan which
28 shall adhere to the following priority listing of rehabilitation
29 goals:

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

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

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

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

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

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

7 (2) Within 50 days after such referral, the report shall be
8 submitted to and reviewed by the rehabilitation administrator and
9 copies shall be furnished to each party. If all parties do not
10 agree with the report, the rehabilitation administrator shall
11 confer with the rehabilitation service provider, the employee and
12 the employer to review the evaluation assessment and the proposed
13 rehabilitation plan in the report. The rehabilitation
14 administrator shall ensure the evaluation assessment and the
15 rehabilitation plan are objective and reasonable and the
16 rehabilitation goal is reasonably obtainable. Within 20 days
17 after the initial review of the report, the rehabilitation
18 administrator shall deliver copies of the report, together with
19 the rehabilitation administrator's recommendations and any
20 revisions of or objections to the rehabilitation plan, to each
21 party, to the director and to the assigned administrative law
22 judge, if there is one. Within 10 days after receipt of such
23 report, any party may request a hearing before the director on
24 any matter contained in the report or any such recommendations or
25 revisions. After affording the parties an opportunity to be heard
26 and present evidence, the director:

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

30 (B) may order the employer to pay temporary total disability
31 compensation, computed as provided in K.S.A. 44-510c and
32 amendments thereto, or temporary partial disability compensation,
33 computed as provided in K.S.A. 44-510e and amendments thereto,
34 during the period of rehabilitation evaluation assessment and
35 continuing through the date the rehabilitation plan is delivered

1 to the director as provided in subsection (e)(2). Temporary total
2 or temporary partial disability compensation paid solely because
3 of involvement in the rehabilitation ~~evaluation~~ assessment
4 process shall not be payable for more than 70 days from the date
5 of the ~~evaluation~~ assessment, except such temporary total or
6 temporary partial disability compensation may be continued by the
7 director for an additional period of not more than 30 days if
8 circumstances outside the control of the employee prevents
9 completion of the ~~evaluation~~ assessment or the formulation of the
10 rehabilitation plan;

11 (C) where vocational rehabilitation, reeducation or training
12 is recommended in the report, or is deemed necessary by the
13 director to restore to the employee the ability to perform work
14 in the open labor market and to earn comparable wages, as
15 determined pursuant to subsection (a) of K.S.A. 44-510e and
16 amendments thereto, may direct the employee to the appropriate
17 federal, state or other public facility or agency where such
18 services will or may be provided at no cost to the employer,
19 except as otherwise provided in this section, or, upon the
20 request of the employer, to a qualified rehabilitation service
21 program provided directly by the employer; and

22 (D) if the employee is not eligible for such vocational
23 rehabilitation, reeducation or training through any such state,
24 federal or other public facility or agency, or where such
25 services through such facilities or agencies are not available to
26 the employee within a reasonable period of time, may order such
27 services be provided at the expense of the employer by any
28 qualified private agency or facility in this state or any state
29 contiguous to this state or by a qualified rehabilitation service
30 program provided directly by the employer.

31 (3) Any vocational rehabilitation, reeducation or training
32 to be provided at the expense of the employer under subsection
33 (e)(2) shall not extend for a period of more than 36 weeks,
34 except, in extremely unusual cases, after a hearing and the
35 presentation of evidence, the director, by special order, may

1 extend the period for not more than an additional 36 weeks. The
2 employer shall have a right to appeal to the district court any
3 such special order by the director for any extension of the
4 initial thirty-six-week period, within the time and in the manner
5 provided in K.S.A. 44-556 and amendments thereto and any such
6 special order shall be stayed until the district court has
7 determined the appeal. There shall be no right of appeal to the
8 Kansas supreme court or court of appeals from a judgment of the
9 district court sustaining or overruling any such special order of
10 the director.

11 (f) Where vocational rehabilitation, reeducation or training
12 is to be furnished at the expense of the employer under this
13 section, and such services require that the employee reside at or
14 near a facility or institution, away from the employee's
15 customary county of residence, either in or out of the state of
16 Kansas, the reasonable costs of the employee's board, lodging and
17 travel, not to exceed a maximum total of \$3,500 for any
18 thirty-six-week period, shall be paid by the employer, except, in
19 unusual cases where, after a hearing and the presentation of
20 evidence the director finds the costs are clearly reasonable and
21 necessary, the director may require by special order that the
22 employer pay an additional amount for the costs of the employee's
23 board, lodging and travel of not more than \$2,000.

24 (g) The employer shall pay temporary total disability
25 compensation during any period of vocational rehabilitation,
26 reeducation or training, computed as provided in K.S.A. 44-510c
27 and amendments thereto, but the employer shall receive credit for
28 any weekly, monthly or other monetary payments made to the
29 employee or such employee's family by any state, federal or other
30 public agency during any such period, exclusive of any such
31 payments for the board, lodging and travel expenses of the
32 employee. Subject to a maximum of 26 weeks, the number of weeks
33 during which temporary total disability compensation is paid
34 during vocational rehabilitation, reeducation or training shall
35 not be deducted from the maximum number of weeks available for

1 the payment of disability compensation under the schedule
2 provided in K.S.A. 44-510d and amendments thereto.

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

13 (i) Whenever the director determines there is a reasonable
14 probability that with appropriate medical, physical or vocational
15 rehabilitation, reeducation or training, a person, who is
16 entitled to compensation for permanent total disability, partial
17 disability or any other disability under the workers compensation
18 act, may be rehabilitated to the extent such person can become
19 able to perform work in the open labor market and to earn
20 comparable wages, as determined pursuant to subsection (a) of
21 K.S.A. 44-510e and amendments thereto, and it is for the best
22 interests of such person to undertake such rehabilitation,
23 reeducation or training, if the injured employee without good
24 cause refuses to undertake the rehabilitation, educational or
25 training program determined by the director to be suitable for
26 such employee or refuses to be evaluated under the provisions of
27 subsection (e) and the refusal is not due to the employee's
28 physical or mental ability to do so, the employee shall be
29 considered as having elected not to participate in such
30 rehabilitation, reeducation or training and the director may
31 suspend the payment of any disability compensation until the
32 employee consents to undertake such program or to be so
33 evaluated. The director may reduce the disability compensation
34 otherwise payable if any such refusal persists for a period in
35 excess of 90 days, except disability compensation shall not be

1 reduced to less than that payable for permanent partial
2 disability in accordance with K.S.A. 44-510d and amendments
3 thereto or for permanent partial general disability for
4 functional impairment in accordance with K.S.A. 44-510e and
5 amendments thereto.

6 (j) At such time as any medical, physical or vocational
7 rehabilitation, reeducation or training has been completed under
8 this section, the employer shall have the right, by the filing of
9 an application with the director, to seek a modification of any
10 award which has been rendered granting any compensation to the
11 employee for any disability. Upon at least 20 days' notice by
12 registered mail to all parties, the director shall set the
13 application for hearing and the parties shall present all
14 material and relevant evidence. In the event the director
15 determines the employee is rehabilitated so such employee is able
16 to perform work in the open labor market and to earn comparable
17 wages, as determined pursuant to subsection (a) of K.S.A. 44-510e
18 and amendments thereto, the director shall modify any award of
19 compensation or, if no such award has been made, the director
20 shall make an award to reflect only such disability, if any, as
21 exists at the conclusion of such rehabilitation. Any award of
22 partial disability, or modification of an existing award, made
23 pursuant to this subsection (j) shall be subject to the
24 provisions of K.S.A. 44-510d and 44-510e and amendments thereto.

25 (k) For any week with respect to which the employee is
26 receiving unemployment compensation benefits under the employment
27 security law or any other unemployment compensation law of any
28 other state or a similar federal law, no temporary total
29 disability compensation or temporary partial disability
30 compensation shall be payable under this section.

31 Sec. 7. K.S.A. 1989 Supp. 44-512a is hereby amended to read
32 as follows: 44-512a. (a) In the event any compensation, including
33 medical compensation, which has been awarded under the workers
34 compensation act, is not paid when due to the person, firm or
35 corporation entitled thereto, the employee shall be entitled to a

1 civil penalty, to be set by the director and assessed against the
2 employer or insurance carrier liable for such compensation in an
3 amount of not more than \$100 per week for each week any
4 disability compensation is past due and in an amount for each
5 past due medical bill equal to the larger of either the sum of
6 \$25 ~~for each~~ or the sum equal to 10% of the amount which is past
7 due on the medical bill, if: (1) Service of written demand for
8 payment, setting forth with particularity the items of disability
9 and medical compensation claimed to be unpaid and past due, has
10 been made personally or by registered mail on the employer or
11 insurance carrier liable for such compensation and its attorney
12 of record; and (2) payment of such demand is thereafter refused
13 or is not made within 20 days from the date of service of such
14 demand.

15 (b) After the service of such written demand, if the payment
16 of disability compensation or medical compensation set forth in
17 the written demand is not made within 20 days from the date of
18 service of such written demand, plus any civil penalty, as
19 provided in subsection (a), if such compensation was in fact past
20 due, then all past due compensation and any such penalties shall
21 become immediately due and payable. Service of written demand
22 shall be required only once after the final award. Subsequent
23 failures to pay compensation, including medical compensation,
24 shall entitle the employee to apply for the civil penalty without
25 demand. The employee may maintain an action in the district court
26 of the county where the cause of action arose for the collection
27 of such past due disability compensation and medical
28 compensation, any civil penalties due under this section and
29 reasonable attorney fees incurred in connection with the action.

30 (c) The remedies of execution, attachment, garnishment or
31 any other remedy or procedure for the collection of a debt now
32 provided by the laws of this state shall apply to such action and
33 also to all judgments entered under the provisions of K.S.A.
34 44-529 and amendments thereto, except that no exemption granted
35 by any law shall apply except the homestead exemption granted and

1 guaranteed by the constitution of this state.

2 Sec. 8. K.S.A. 44-515 is hereby amended to read as follows:
3 44-515. (a) After an employee sustains an injury, the employee
4 shall, upon request of the employer, submit to an examination at
5 any reasonable time and place by any one or more reputable
6 ~~physicians,--as--defined--in-K.S.A.--44-508--and--amendments--thereto~~
7 health care providers, selected by the employer, and shall so
8 submit to an examination thereafter at intervals during the
9 pendency of such employee's claim for compensation, upon the
10 request of the employer, but the employee shall not be required
11 to submit to an examination oftener than twice in any one (1) ~~(1)~~
12 month, unless required to do so in accordance with such orders as
13 may be made by the director. Any employee so submitting to an
14 examination or such employee's authorized representative shall
15 upon request be entitled to receive and shall have delivered to
16 such employee a copy of the ~~physician's~~ health care provider's
17 report of such examination within ~~fifteen-(15)~~ 15 days after such
18 examination, which report shall be identical to the report
19 submitted to the employer. If the employee is notified to submit
20 to an examination before any ~~physician~~ health care provider in
21 any town or city other than the residence of the employee at the
22 time that the employee received an injury, the employee shall not
23 be required to submit to an examination until such employee has
24 been furnished with sufficient funds to pay for transportation to
25 and from the place of examination at the rate prescribed for
26 compensation of state officers and employees under K.S.A.
27 75-3203a and amendments thereto, for each mile actually and
28 necessarily traveled to and from the place of examination, and in
29 addition the sum of ~~fifteen-dollars-(15)~~ \$15 per day for each
30 day or a part thereof that the employee was required to be away
31 from such employee's residence to defray such employee's board
32 and lodging and living expenses. The employee shall not be liable
33 for any fees or charge of any ~~physicians~~ health care provider
34 selected by the employer for making any examination of the
35 employee. The employer or the insurance carrier of the employer

1 of any workman employee making claim for compensation under the
 2 ~~workmen's~~ workers compensation act shall be entitled to a copy of
 3 the report of any physician health care provider who has examined
 4 or treated the employee in regard to such claim upon written
 5 request to the employee or the employee's attorney within fifteen
 6 ~~(15)~~ 15 days after such examination or treatment, which report
 7 shall be identical to the report submitted to the employee or the
 8 employee's attorney.

9 (b) If the employee requests, such employee shall be
 10 entitled to have physicians health care providers of such
 11 employee's own selection present at the time to participate in
 12 such examination.

13 (c) Unless a report is furnished as provided in subsection
 14 (a) and unless there ~~be~~ is a reasonable opportunity thereafter
 15 for the physicians health care providers selected by the employee
 16 to participate in the examination in the presence of the
 17 physicians health care providers selected by the employer, the
 18 physicians health care providers selected by the employer or
 19 employee shall not be permitted afterwards to give evidence of
 20 the condition of the employee at the time such examination was
 21 made.

22 Except as provided herein in this section, there shall be no
 23 disqualification or privilege preventing the furnishing of
 24 reports by or the testimony of any physician health care provider
 25 who actually makes an examination or treats an injured employee,
 26 prior to or after an injury.

27 Sec. 9. K.S.A. 44-516 is hereby amended to read as follows:
 28 44-516. In case of a dispute as to the injury, the director as
 29 ~~hereinafter--provided--may, at his,~~ in the director's discretion,
 30 or upon request of either party, may employ one or more neutral
 31 physicians health care providers, not exceeding three ~~(3)~~ in
 32 number, who shall be of good standing and ability, ~~whose duty--it~~
 33 ~~shall---be---to.~~ The health care providers shall make such
 34 examinations of the injured workman employee as the director may
 35 direct.

1 Sec. 10. K.S.A. 44-518 is hereby amended to read as follows:
 2 44-518. If the employee refuses to submit ~~himself-for~~ to an
 3 examination upon request of the employer as provided for in
 4 K.S.A. 44-515, and amendments thereto or if the employee or his
 5 ~~physician--or--surgeon~~ the employee's health care provider
 6 unnecessarily obstructs or prevents such examination by the
 7 ~~physician-or-surgeon~~ health care provider of the employer, the
 8 employee's right to payment of compensation shall be ~~and-remain~~
 9 suspended until ~~he--shall--submit~~ the employee submits to an
 10 examination and until such examination ~~shall-have-taken-place,~~
 11 and is completed. No compensation shall be payable under ~~this the~~
 12 workers compensation act during the period of suspension.
 13 ~~Provided-further, That-in-the-event.~~ If the employee ~~shall-refuse~~
 14 refuses to submit ~~himself~~ to an examination while any proceedings
 15 are pending for the purpose of determining the amount of
 16 compensation due, ~~said~~ such proceedings shall be dismissed upon
 17 showing being made of ~~said the~~ refusal of ~~said the~~ employee to
 18 submit ~~himself-for~~ to an examination.

19 Sec. 11. K.S.A. 44-519 is hereby amended to read as follows:
 20 44-519. No report of any examination of any employee by a
 21 ~~physician-or-surgeon, as-hereinbefore-in-this-act--provided--for,~~
 22 ~~nor--any~~ health care provider, as provided for in the workers
 23 compensation act and no certificate issued or given by the
 24 ~~physician---or---surgeon~~ health care provider making such
 25 examination, shall be competent evidence in any proceeding for
 26 the determining or collection of compensation unless supported by
 27 the testimony of such ~~physician-or-surgeon~~ health care provider,
 28 if this testimony is admissible, ~~nor~~ and shall not be competent
 29 evidence in any case where testimony of such ~~physician-or-surgeon~~
 30 health care provider is not admissible.

31 Sec. 12. K.S.A. 1989 Supp. 44-528 is hereby amended to read
 32 as follows: 44-528. (a) Any award or modification thereof agreed
 33 upon by the parties, except lump-sum settlements approved by the
 34 director or administrative law judge, whether the award provides
 35 for compensation into the future or whether it does not, may be

1 reviewed by the director for good cause shown upon the
2 application of the employee, employer, dependent, insurance
3 carrier or any other interested party. In connection with such
4 review the director may appoint one or two physicians health care
5 providers to examine the employee and report to the director. The
6 director shall hear all competent evidence offered and if the
7 director finds that the award has been obtained by fraud or undue
8 influence, that the award was made without authority or as a
9 result of serious misconduct, that the award is excessive or
10 inadequate or that the functional impairment or work disability
11 of the employee has increased or diminished, the director may
12 modify such award, or reinstate a prior award, upon such terms as
13 may be just, by increasing or diminishing the compensation
14 subject to the limitations provided in the workers compensation
15 act.

16 (b) If the director finds that the employee has returned to
17 work for the same employer in whose employ the employee was
18 injured or for another employer and is earning or is capable of
19 earning the same or higher wages than the employee did at the
20 time of the accident, or is capable of gaining an income from any
21 trade or employment which is equal to or greater than the wages
22 the employee was earning at the time of the accident, or finds
23 that the employee has absented and continues to be absent so that
24 a reasonable examination cannot be made of the employee by a
25 physician health care provider selected by the employer, or has
26 departed beyond the boundaries of the United States, the director
27 may modify the award and reduce compensation or may cancel the
28 award and end the compensation.

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

32 (d) Any modification of an award under this section on the
33 basis that the functional impairment or work disability of the
34 employee has increased or diminished shall be effective as of the
35 date that the increase or diminishment actually occurred, except

1 that in no event shall the effective date of any such
 2 modification be more than six months prior to the date the
 3 application was made for review and modification under this
 4 section.

5 Sec. 13. K.S.A. 1989 Supp. 44-534a is hereby amended to read
 6 as follows: 44-534a. (a) After filing an application for a
 7 hearing pursuant to K.S.A. 44-534 and amendments thereto, the
 8 employee may make application for a preliminary hearing, in such
 9 form as the director may require by rules and regulations, on the
 10 issues of the furnishing of medical treatment and the payment of
 11 temporary total disability compensation and for any matter
 12 relative to the furnishing of vocational rehabilitation in
 13 accordance with and subject to the provisions of K.S.A. 44-510g
 14 and amendments thereto. At least seven days prior to filing an
 15 initial application for a preliminary hearing, the employee shall
 16 notify the employer of the employee's intent to file such an
 17 application and shall confirm such notice by letter. Such prior
 18 seven-day notice shall be required to be given to the employer
 19 only once in any case. Upon receipt of an application for such a
 20 preliminary hearing, the director shall give seven days' written
 21 notice by mail to the employer of the date set for such hearing.
 22 Such preliminary hearing shall be summary in nature and shall be
 23 held by the director or an administrative law judge in any county
 24 designated by the director or administrative law judge, and the
 25 director or administrative law judge shall exercise such powers
 26 as are provided for the conduct of full hearings on claims under
 27 the workers compensation act. Upon a preliminary finding that the
 28 injury to the employee is compensable and in accordance with the
 29 facts presented at such preliminary hearing, the director or
 30 administrative law judge may make a preliminary award of medical
 31 compensation and temporary total disability compensation to be in
 32 effect pending the conclusion of a full hearing on the claim. If
 33 temporary total compensation is awarded, such compensation ^{may} shall
 34 be payable from the date of filing the application ~~under K.S.A.~~
 35 ~~44-534 and amendments thereto,~~ except that if the administrative

1 law judge finds from the evidence presented that there were one
2 or more periods of temporary total disability prior to such
3 filing date, temporary total compensation may be payable for all
4 periods of temporary total disability prior to such date of
5 filing. The decision in such preliminary hearing shall be
6 rendered within five days of the conclusion of such hearing. No
7 such preliminary findings or preliminary awards shall be
8 appealable by any party to the proceedings, and the same shall
9 not be binding in a full hearing on the claim, but shall be
10 subject to a full presentation of the facts.

11 (b) If compensation in the form of medical benefits,
12 temporary total disability benefits or vocational rehabilitation
13 benefits has been paid by the employer or the employer's
14 insurance carrier either voluntarily or pursuant to a preliminary
15 award entered under this section and, upon a full hearing on the
16 claim, the amount of compensation to which the employee is
17 entitled is found to be less than the amount of compensation paid
18 or is totally disallowed, the employer and the employer's
19 insurance carrier shall be reimbursed from the workers
20 compensation fund established in K.S.A. 44-566a and amendments
21 thereto, for all amounts of compensation so paid which are in
22 excess of the amount of compensation the employee is entitled to
23 as determined in the full hearing on the claim. The director
24 shall determine the amount of compensation paid by the employer
25 or insurance carrier which is to be reimbursed under this
26 subsection, and the director shall certify to the commissioner of
27 insurance the amount so determined. Upon receipt of such
28 certification, the commissioner of insurance shall cause payment
29 to be made to the employer or the employer's insurance carrier in
30 accordance therewith.

31 Sec. 14. K.S.A. 44-551 is hereby amended to read as follows:
32 44-551. (a) The duties of the assistant directors of workers
33 compensation shall include but not be limited to acting in the
34 capacity of an administrative law judge and the conducting of
35 director reviews, provided the director shall be the final

1 approving authority for such director reviews.

2 (b) (1) Administrative law judges shall have power to
3 administer oaths, certify official acts, take depositions, issue
4 subpoenas, compel the attendance of witnesses and the production
5 of books, accounts and papers, and under the direction of the
6 director, may conduct an investigation, inquiry, or hearing in
7 the same manner and with like effect as if done by the director.
8 All acts, findings, awards, decisions, rulings or modifications
9 of findings or awards made by an administrative law judge, shall
10 be subject to review and approval by the director upon written
11 request of any interested party within 10 days and if no such
12 request is made, then the director shall approve such actions,
13 findings, awards, decisions, rulings or modifications of findings
14 or awards of the administrative law judge. The filing of such a
15 request for review shall not be a prerequisite to judicial review
16 as provided for in K.S.A. 44-556 and amendments thereto.

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

34 (B) If an order on review is not issued by the director
35 within the time period prescribed by subsection (b(2)(A), medical

1 compensation and any disability compensation as provided in the
2 award of the administrative law judge shall be payable commencing
3 on the first day after such time period and shall continue to be
4 paid in accordance with such award until the director's order is
5 issued. Nothing in this section shall be construed to limit or
6 restrict any other remedies available to any party to a claim
7 under any other statute.

8 (C) In any case in which the final award of an
9 administrative law judge is appealed to the director for review
10 under this section and in which the compensability is not an
11 issue to be decided on review by the director, medical
12 compensation shall be payable in accordance with the award of the
13 administrative law judge and shall not be stayed pending such
14 review. The employee may proceed under K.S.A. 44-534a and
15 amendments thereto and may have a hearing in accordance with that
16 statute to enforce the provisions of this subsection.

17 (c) Each assistant director and each administrative law
18 judge or special administrative law judge shall be allowed all
19 reasonable and necessary expenses actually incurred while in the
20 actual discharge of official duties in administering the
21 ~~workmen's~~ workers compensation act, but such expenses shall be
22 sworn to by the person incurring the same and be approved by the
23 secretary.

24 (d) In case of emergency the director may appoint special
25 local administrative law judges and assign to them the
26 examination and hearing of any designated case or cases. Such
27 special local administrative law judges shall be attorneys and
28 admitted to practice law in the state of Kansas and shall, as to
29 all cases assigned to them, exercise the same powers as provided
30 by this section for the regular administrative law judges.
31 Special local administrative law judges shall receive a fee
32 commensurate with the services rendered as fixed by rules and
33 regulations adopted by the director. The fees prescribed by this
34 section prior to the effective date of this act shall be
35 effective until different fees are fixed by such rules and

1 regulations.

2 (e) All special local administrative law judge's fees and
3 expenses shall be taxed as cost in each case heard by such
4 special local administrative law judge and when collected shall
5 be paid directly to such special local administrative law judge
6 by the party charged with the payment of the same.

7 Sec. 15. K.S.A. 1989 Supp. 44-556 is hereby amended to read
8 as follows: 44-556. (a) Any action of the director pursuant to
9 the workers compensation act shall be subject to review in
10 accordance with the act for judicial review and civil enforcement
11 of agency actions. Such review shall be upon questions of law and
12 fact as presented and shown by a transcript of the evidence and
13 proceedings as presented, had and introduced before the director.
14 The venue of the action shall be the county where the cause of
15 action arose or the county mutually agreed upon by all of the
16 parties. Any such action shall have precedence over all other
17 hearings except those of like character, and shall be heard not
18 later than the first term of the district court after the appeal
19 has been perfected, and the court shall decide all such cases
20 within 60 days after submission. The appealing party shall notify
21 the director when judgment is issued by the court. If judgment is
22 not issued within 60 days of submission, ~~the appealing party~~
23 ~~shall~~ any party may notify the director to that effect. The
24 director will advise the judge to whom the case was submitted
25 that 60 days has elapsed since submission of the case and request
26 that a decision be rendered. If no decision is forthcoming within
27 30 days of such request by the director, the director will advise
28 the supreme court justice having jurisdiction over such judge of
29 all of the facts in regard to the review and the failure of the
30 judge to render a decision as required by this section.

31 (b) On any such review the district court shall have
32 jurisdiction to grant or refuse compensation, or to increase or
33 diminish any award of the director as justice may require. No
34 compensation shall be due or payable until the expiration of the
35 time for commencing an action for review and then the payment of

1 past due compensation awarded by the director shall not be
2 payable if, within such time a petition for review, has been
3 filed in accordance with the act for judicial review and civil
4 enforcement of agency actions. Except as otherwise provided by
5 this section, the right of review shall include the right to make
6 no payments of such compensation until the review has been
7 decided by the district court if the employer is insured for
8 workers compensation liability with an insurance company
9 authorized to do business in this state, if the employer is
10 maintaining membership in a qualified group-funded workers
11 compensation pool under K.S.A. 44-581 through 44-591 and
12 amendments thereto, if the employer is maintaining membership in
13 a group-funded pool under the Kansas municipal group-funded pool
14 act which includes workers compensation and employers' liability
15 under the workers compensation act, or if the employer is
16 currently approved by the director as a self-insurer and has
17 filed a bond with the district court in accordance with K.S.A.
18 44-530 and amendments thereto. Commencement of an action for
19 review shall not stay the payment of compensation due for the
20 ten-week period next preceding the director's decision and for
21 the period of time after the director's decision and prior to the
22 decision of the district court on review.

23 (c) If review of the decision of the district court is
24 sought pursuant to K.S.A. 77-623 and amendments thereto, the
25 compensation payable under the decision of the district court
26 shall not be stayed pending such review. Review of the decision
27 of the district court shall take precedence over other cases
28 except cases of the same character.

29 (d) (1) If compensation, including medical benefits,
30 temporary total disability benefits or vocational rehabilitation
31 benefits, has been paid to the worker by the employer or the
32 employer's insurance carrier during the pendency of review by the
33 district court or by appellate courts and the amount of
34 compensation awarded by the director or the district court is
35 reduced or totally disallowed by the decision on the appeal or

1 review, the employer and the employer's insurance carrier, except
2 as otherwise provided in this section, shall be reimbursed from
3 the workers compensation fund established in K.S.A. 44-566a and
4 amendments thereto for all amounts of compensation so paid which
5 are in excess of the amount of compensation that the worker is
6 entitled to as determined by the final decision on review. The
7 director shall determine the amount of compensation paid by the
8 employer or insurance carrier which is to be reimbursed under
9 this subsection (d)(1), and the director shall certify to the
10 commissioner of insurance the amount so determined. Upon receipt
11 of such certification, the commissioner of insurance shall cause
12 payment to be made to the employer or the employer's insurance
13 carrier in accordance therewith.

14 (2) If any temporary or permanent partial disability or
15 temporary or permanent total disability benefits have been paid
16 to the worker by the employer or the employer's insurance carrier
17 during the pendency of review by the district court or by
18 appellate courts and the amount of compensation awarded for such
19 benefits by the director or the district court is reduced by the
20 decision on the appeal or review and the balance of compensation
21 due the worker exceeds the amount of such reduction, the employer
22 and the employer's insurance carrier shall receive a credit which
23 shall be applied as provided in this subsection (d)(2) for all
24 amounts of such benefits which are in excess of the amount of
25 such benefits that the worker is entitled to as determined by the
26 final decision on review or appeal. If a lump-sum amount of
27 compensation is due and owing as a result of the decision of the
28 district court, the credit under this subsection (d)(2) shall be
29 applied first against such lump-sum amount. If there is no such
30 lump-sum amount or if there is any remaining credit after a
31 credit has been applied to a lump-sum amount due and owing, such
32 credit shall be applied against the last compensation payments
33 which are payable for a period of time after the final decision
34 on review or appeal so that the worker continues to receive
35 compensation payments after such final decision until no further

1 compensation is payable after the credit has been satisfied. The
2 credit allowed under this subsection (d)(2) shall not be applied
3 so as to stop or reduce benefit payments after such final
4 decision, but shall be used to reduce the period of time over
5 which benefit payments are payable after such final decision. The
6 provisions of this subsection (d)(2) shall be applicable in all
7 cases under the workers compensation act in which a final award
8 is issued by an administrative law judge on or after July 1,
9 1990.

10 (e) If compensation, including medical benefits, temporary
11 total disability benefits or vocational rehabilitation benefits,
12 has been paid to the worker by the employer, the employer's
13 insurance carrier or the workers compensation fund during the
14 pendency of review by the district court or by appellate courts,
15 and the employer, the employer's insurance carrier or the workers
16 compensation fund, which was held liable for and ordered to pay
17 all or part of the amount of compensation awarded by the director
18 or the district court, is held not liable by the final decision
19 on the appeal or review for the compensation paid or is held
20 liable on such appeal or review to pay an amount of compensation
21 which is less than the amount paid pursuant to the award, then
22 the employer, employer's insurance carrier or workers
23 compensation fund shall be reimbursed by the party or parties
24 which were held liable on such appeal or review to pay the amount
25 of compensation to the worker that was erroneously ordered paid
26 by the director or district court. The director shall determine
27 the amount of compensation which is to be reimbursed to each
28 party under this subsection, if any, in accordance with the final
29 decision on the appeal or review and shall certify each such
30 amount to be reimbursed to the party required to pay the amount
31 or amounts of such reimbursement. Upon receipt of such
32 certification, the party required to make the reimbursement shall
33 pay the amount or amounts required to be paid in accordance with
34 such certification. No worker shall be required to make
35 reimbursement under this subsection or subsection (d).

1-40

1 (f) As used in subsections (d) and (e), "employers'
 2 insurance carrier" includes any qualified group-funded workers
 3 compensation pool under K.S.A. 44-581 through 44-591 and
 4 amendments thereto or a group-funded pool under the Kansas
 5 municipal group-funded pool act which includes workers
 6 compensation and employers' liability under the workers
 7 compensation act.

8 (g) In any case in which any review is sought under this
 9 section and in which the compensability is not an issue to be
 10 decided on review, medical compensation shall be payable and
 11 shall not be stayed pending such review. The worker may proceed
 12 under K.S.A. 44-534a and amendments thereto and may have a
 13 hearing in accordance with that statute to enforce the provisions
 14 of this subsection.

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

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

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

1 (3) has departed beyond the boundaries of the United States,
2 ~~the director may cancel the award and end the compensation.~~

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

25 Sec. 18. K.S.A. 44-515, 44-516, 44-518, 44-519, 44-551,
26 44-5a04 and 44-5a18 and K.S.A. 1989 Supp. 44-501, 44-508, 44-510,
27 44-510c, 44-510e, 44-510g, 44-512a, 44-528, 44-534a and 44-556
28 are hereby repealed.

29 Sec. 19. This act shall take effect and be in force from and
30 after its publication in the statute book.