

Approved

Date

AMO 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 27, 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. Jim Wilson distributed copies of the revised draft of proposed Substitute for HB 3069 which incorporates the addendum concerning page 9, paragraph (B), attachment #1.

Representative Patrick questioned the language on page 9, paragraph (B), stating it didn't seem to clearly state the appointments would alternate between the Kansas Chamber of Commerce & Industry and the Kansas Chapter of the National Federation of Independent Business. Mr. Wilson responded that additional language, as was amended into SB 645, could be inserted in this bill also to clearly state the appointments are alternating. Representative Patrick made a conceptual motion to include such language in proposed Sub. HB 3069. Representative Holmes seconded the motion. The motion carried.

Chairman Douville discussed the revised draft:

Page 13, line 31: a health care provider cannot engage a collection service until after final adjudication of any claim.

Representative Gomez asked if the term "collection agency" would extend to self-collection, for example, an employer who has his own in-house collection department. Chairman Douville responded yes, the intent is to prohibit any type of collection.

Page 16, line 33: a release may or may not be determinative of an employee's ability for substantial and gainful employment.

Page 18, line 15: refers to the use of AMA Guides.

Representative Webb moved to remove the entire section of paragraph (2) on page 18, beginning on line 15, which refers to the use of AMA Guides. Representative Crumbaker seconded the motion. Representative Patrick stated he is opposed to removing this section. If there are no standards set in the bill, how will the Department of Human Resources know that "accepted standards" are being followed? The motion carried.

Page 27, line 3: an employee can't collect both unemployment compensation and temporary disability.

Page 33, line 30: seven-day notice only required once in any case.

Page 34, line 10: compensation may be payable from the date of the filing of the application and additional temporary total disability may be allowed.

Representative O'Neal stated the word "payable", as contained on page 34, lines 12 and 16, is not necessarily an operative word and should be replaced by "ordered paid". Representative O'Neal made a conceptual motion to change the language accordingly. Representative Flottman seconded the motion. The motion carried.

Page 35, line 29: if the Director doesn't issue a review within the specified time, then compensation will be payable in accordance with the administrative law judge's decision.

Referring to page 35, line 32, Representative O'Neal stated the term "believed" is not a judicial term and moved that it be replaced by "alleged". Representative Flottman seconded the motion. The motion carried.

CONTINUATION SHEET

MINUTES OF THE House COMMITTEE ON Labor & Industry,  
room 526-S, Statehouse, at 9:08 a.m./~~p.m.~~ on March 27, 1990

Page 39, line 28: if the final decision of the appellate court indicates an employee is not entitled to what was previously awarded, the employer can get a credit at the end of the award.

Page 41, line 22: medical compensation is payable if there is no question of compensability; provides for a penalty if carrier doesn't pay.

Representative Green, referring to page 8, line 26, asked if care providers not specifically listed are included. Chairman Douville responded yes.

Referring to page 13, line 30, Representative Hensley moved to insert the following language: "Injured workers shall have the right in the first instance, to select a health care provider. Either party can request changes in the health care provider pursuant to a preliminary hearing before an award; or K.S.A. 44-536(a) after final award or judgment. Representative Webb seconded the motion. Representative Hensley explained that allowing an injured worker to select the health care provider will eliminate the adversarial role set up when a health care provider is imposed upon the worker.

Chairman Douville stated the employer is charged with providing adequate medical care and also, safeguards are built into the bill for an employee to request a change of doctor. He opposes the amendment.

Representative Patrick stated this bill will establish what a doctor can charge so allowing the employee to pick the doctor will not create excessive medical costs.

Representative Schauf stated she thought the amendment would have no real affect on the bill.

Representative Buehler said there are two things connected with medical care, the fee and how often the fee is charged. It is important to get the correct health care provider the first time. He opposes the amendment.

Representative Whiteman stated that if the worker is allowed to choose someone they have confidence in, studies have shown this is related to their ability to get better and, in the long run, may reduce costs.

In closing, Representative Hensley stated the intent behind his amendment is to minimize conflict. Division was called. On a show of hands, the vote was 8 to 11. The motion was defeated.

Referring to page 13, line 20, Representative Gomez moved to include the term "physical therapist". There was no second. Discussion followed and no action will be taken at this time.

Representative Buehler moved to report Sub. HB 3069 favorable for passage. Representative Flottman seconded the motion. Representative Patrick made a substitute motion to table the bill. Representative Schauf seconded the motion. The motion to table the bill was defeated. Discussion followed. Representative Whiteman clarified that two motions are needed. One to adopt the substitute bill and one to pass it favorably as amended. Representative Buehler withdrew his original motion and made another motion to adopt the bill as Substitute for HB 3069. Representative Flottman withdrew her original second and then seconded the new motion. The motion carried. Representative Buehler moved to report Substitute for HB 3069 favorable for passage. Representative Flottman seconded the motion.

Representative Patrick reiterated his opposition to the bill stating all it does is create more bureaucracy and won't help control health care costs.

Representative Schauf stated she would oppose passing the bill favorable for passage as it has been changed too much from the original version.

Representative Green stated he was not originally in favor of this bill, but now supports it because at least an attempt is being made to improve the health care cost situation.

The motion carried.

The meeting adjourned at 9:56 a.m. There are no further meetings scheduled at this time.



MONDAY 3/26/90 Now

Subject to further Comm. Deliberations

\* This version incorporates  
the Addendum [paragraph  
(B) in revised form]

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.

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 and six members appointed as follows: (i) One person  
14 shall be appointed by the Kansas medical society, (ii) one member  
15 shall be appointed by the Kansas association of osteopathic  
16 medicine, (iii) one member shall be appointed by the Kansas  
17 hospital association, (iv) one member shall be appointed by the  
18 Kansas chiropractic association, and (v) two members appointed by  
19 the secretary. One member appointed by the secretary shall be a  
20 representative of employers recommended to the secretary, for the  
21 initial term of office commencing July 1, 1990, and for each term  
22 of office commencing at the end of each four-year period  
23 thereafter, by the Kansas chapter of the national federal of  
24 independnt business and a representative recommended to the  
25 secretary, for the term of office commencing July 1, 1992, and  
26 for each term of office commencing at the end of each four-year  
27 period thereafter, by the Kansas chamber of commerce and  
28 industry. The other member appointed by the secretary shall be a  
29 representative of employees recommended to the secretary by the  
30 Kansas AFL-CIO. Each appointed member shall be appointed for a  
31 term of office of two years which shall commence on July 1 of the  
32 year of appointment.

33 (C) The panel shall annually review and approve the  
34 schedules of maximum fees for such reasonably necessary  
35 treatment, care and attendance to each injured employee to cure

1 and relieve the employee from the effects of the injury. All  
2 fees and other charges paid for such treatment, care and  
3 attendance, including treatment, care and attendance provided by  
4 any health care provider, hospital or other entity providing  
5 health care services, shall not exceed the amounts prescribed by  
6 the schedules of maximum fees established under this section or  
7 the amounts authorized pursuant to the provisions and review  
8 procedures prescribed by the schedules for exceptional cases. A  
9 health care provider, hospital or other entity providing health  
10 care services shall be paid either such health care provider,  
11 hospital or other entity's usual charge for the treatment, care  
12 and attendance or the maximum fees as set forth in the applicable  
13 schedule, whichever is less. In reviewing and approving the  
14 schedules of maximum fees, the panel shall consider the  
15 following:

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

20 (ii) The impact upon cost to employers for providing a level  
21 of fees for treatment, care and attendance which will ensure the  
22 availability of treatment, care and attendance required for  
23 injured employees;

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

27 (iv) The financial impact of the schedule of maximum fees  
28 upon health care providers and health care facilities and its  
29 effect upon their ability to make available to employees such  
30 reasonably necessary treatment, care and attendance to each  
31 injured employee to cure and relieve the employee from the  
32 effects of the injury.

33 (D) Members of the advisory panel attending meetings of the  
34 advisory panel, or attending a subcommittee of the advisory panel  
35 authorized by the advisory panel, shall be paid compensation,

1 subsistence allowances, mileage and other expenses as provided in  
2 K.S.A. 75-3223 and amendments thereto.

3 (4) Any contract or any billing or charge which any health  
4 care provider, hospital, person, or institution enters into with  
5 or makes to any patient for services rendered in connection with  
6 injuries covered by the workers compensation act or a fee  
7 schedule adopted under this section, which is or may be in excess  
8 of or not in accordance with such act or fee schedule is  
9 unlawful, void and unenforceable as a debt.

10 (5) The director shall have jurisdiction to hear and  
11 determine all disputes as to such charges and interest due  
12 thereon and shall prescribe procedural rules to be followed by  
13 the parties to such disputes. In the event of any controversy  
14 arising under this section, payments shall not be delayed for any  
15 amounts not in dispute or controversy. Acceptance by any provider  
16 of services of a payment amount under this section which is less  
17 than the full amount charged for the services, shall not affect  
18 the right to have a review of the claim for the outstanding or  
19 remaining amounts.

20 (6) If the director finds, after utilization review and peer  
21 review, that a health care provider or health care facility has  
22 made excessive charges or provided or ordered unjustified  
23 treatment, services, hospitalization or visits, the health care  
24 provider or health care facility shall not receive payment  
25 pursuant to this section from an insurance carrier, employer or  
26 employee for the excessive fees or unjustified treatment,  
27 services, hospitalization or visits and such health care provider  
28 or health care facility shall repay any fees or charges collected  
29 therefor.

30 (7) The director shall develop and implement, or contract  
31 with a qualified entity to develop and implement, utilization  
32 review and peer review procedures relating to the services  
33 rendered by a health care provider, which services are paid for  
34 in whole or in part pursuant to this section. The director may  
35 contract with a private foundation or organization to provide

1 utilization review, as appropriate, of entities providing health  
2 care services pursuant to this section.

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

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

31 (10) Except as provided by K.S.A. 60-437 and amendments  
32 thereto, all reports, information, statements, memoranda,  
33 proceedings, findings and records submitted to the director for  
34 the purposes of this section, including any records of peer  
35 review committees, shall be privileged and shall not be subject

1 to discovery, subpoena, or other means of legal compulsion for  
2 release to any person or entity and shall not be admissible in  
3 evidence in any judicial or administrative proceeding, except  
4 those authorized pursuant to this section.

5 (11) A health care provider or health care facility may not  
6 improperly charge or overcharge a workers compensation insurer or  
7 charge for services which were not provided, for the purpose of  
8 obtaining additional payment.

9 (12) Any violation of the provisions of this section which  
10 is willful or which demonstrates a pattern of improperly charging  
11 or overcharging workers compensation insurers constitutes grounds  
12 for the director to impose a civil fine not to exceed \$5,000. Any  
13 civil fine imposed under this section shall be subject to review  
14 in accordance with the act for judicial review and civil  
15 enforcement of agency actions in the district court for Shawnee  
16 county. All moneys received for civil fines imposed under this  
17 section shall be deposited in the state treasury to the credit of  
18 the workers compensation fund.

19 (b) Any ~~physician~~ health care provider, nurse, medical  
20 supply establishment, surgical supply establishment, ambulance  
21 service or hospital who accept the terms of the workers  
22 compensation act by providing services or material thereunder  
23 shall be bound by the fees approved by the director and no  
24 injured employee or dependent of a deceased employee shall be  
25 liable for any charges above the amounts approved by the  
26 director. If the employer has knowledge of the injury and refuses  
27 or neglects to reasonably provide the benefits required by this  
28 section, the employee may provide the same for such employee, and  
29 the employer shall be liable for such expenses subject to the  
30 regulations adopted by the director. ~~No judgment may be entered~~  
31 ~~by any district court in any~~ action shall be filed in any court  
32 by a health care provider or other provider of services under  
33 this section for the payment of an amount for medical services or  
34 materials provided under the workers compensation act and such  
35 ~~action shall be stayed~~ no other action to obtain or attempt to



1 obtain or collect such payment shall be taken by a health care  
2 provider or other provider of services under this section,  
3 including employing any collection service, until after final  
4 adjudication of any claim for compensation for which an  
5 application for hearing is filed with the director under K.S.A.  
6 44-534 and amendments thereto. In the case of any such action  
7 filed in a court prior to the date an application is filed under  
8 K.S.A. 44-534 and amendments thereto, no judgment may be entered  
9 in any such cause and the action shall be stayed until after the  
10 final adjudication of the claim. In the case of an action stayed  
11 hereunder, any award of compensation shall require any amounts  
12 payable for medical services or materials to be paid directly to  
13 the provider thereof plus an amount of interest at the rate  
14 provided by statute for judgments. No period of time under any  
15 statute of limitation, which applies to a cause of action barred  
16 under this subsection, shall commence or continue to run until  
17 final adjudication of the claim under the workers compensation  
18 act.

19 (c) If the services of the physician health care provider  
20 furnished as provided in subsection (a) are not satisfactory to  
21 the injured employee, the director may authorize the appointment  
22 of some other physician health care provider subject to the  
23 limitations set forth in this section and the rules and  
24 regulations adopted by the director. Without application or  
25 approval, an employee may consult a physician health care  
26 provider of the employee's choice for the purpose of examination,  
27 diagnosis or treatment, but the employer shall only be liable for  
28 the fees and charges of such physician health care provider up to  
29 a total amount of \$350.

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

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

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

5 (3) the cost of such treatment shall be paid by the employee  
6 unless the employer or insurance carrier agrees to make such  
7 payment;

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

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

14 (e) In any employment to which the workers compensation act  
15 applies, the employer shall be liable to each employee who is  
16 employed as a duly authorized law enforcement officer, ambulance  
17 attendant, mobile intensive care technician, fireman or  
18 firefighter, including any person who is serving on a volunteer  
19 basis in such capacity, for all reasonable and necessary  
20 preventive medical care and treatment for hepatitis to which such  
21 employee is exposed under circumstances arising out of and in the  
22 course of employment.

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

27 (a) (1) Where permanent total disability results from the  
28 injury, weekly payments shall be made during the period of  
29 permanent total disability in a sum equal to 66 2/3% of the  
30 average gross weekly wage of the injured employee, computed as  
31 provided in K.S.A. 44-511 and amendments thereto, but in no case  
32 less than \$25 per week nor more than the dollar amount nearest to  
33 75% of the state's average weekly wage, determined as provided in  
34 K.S.A. 44-511 and amendments thereto, per week. The payment of  
35 compensation for permanent total disability shall continue for

1 the duration of such disability, subject to review and  
2 modification as provided in K.S.A. 44-528 and amendments thereto.

3 (2) Permanent total disability exists when the employee, on  
4 account of the injury, has been rendered completely and  
5 permanently incapable of engaging in any type of substantial and  
6 gainful employment. Loss of both eyes, both hands, both arms,  
7 both feet, or both legs, or any combination thereof, shall, in  
8 the absence of proof to the contrary, constitute a permanent  
9 total disability. Substantially total paralysis, or incurable  
10 imbecility or insanity, resulting from injury independent of all  
11 other causes, shall constitute permanent total disability. In all  
12 other cases permanent total disability shall be determined in  
13 accordance with the facts.

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

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

1 in any type of substantial and gainful employment.

2 (3) Where no award has been entered by the director, a  
3 return by the employee to any type of substantial and gainful  
4 employment or, subject to the provisions of subsection (b)(2), a  
5 release by a treating physieian health care provider or examining  
6 physieian health care provider, who is not regularly employed or  
7 retained by the employer, to return to any such type of  
8 substantial and gainful employment, shall suspend the employee's  
9 right to the payment of temporary total disability compensation,  
10 but shall not affect any right the employee may have to  
11 compensation for partial disability in accordance with K.S.A.  
12 44-510d and 44-510e and amendments thereto.

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

17 Sec. 5. K.S.A. 1989 Supp. 44-510e is hereby amended to read.  
18 as follows: 44-510e. (a) (1) If the employer and the employee are  
19 unable to agree upon the amount of compensation to be paid in the  
20 case of injury not covered by the schedule in K.S.A. 44-510d and  
21 amendments thereto, the amount of compensation shall be settled  
22 according to the provisions of the workers compensation act as in  
23 other cases of disagreement, except that in case of temporary or  
24 permanent partial general disability not covered by such  
25 schedule, the employee shall receive weekly compensation as  
26 determined in this subsection during such period of temporary or  
27 permanent partial general disability not exceeding a maximum of  
28 415 weeks. Weekly compensation for temporary partial general  
29 disability shall be 66 2/3% of the difference between the average  
30 gross weekly wage that the employee was earning prior to such  
31 injury as provided in the workers compensation act and the amount  
32 the employee is actually earning after such injury in any type of  
33 employment, except that in no case shall such weekly compensation  
34 exceed the maximum as provided for in K.S.A. 44-510c and  
35 amendments thereto. Permanent partial general disability exists

1 when the employee is disabled in a manner which is partial in  
2 character and permanent in quality and which is not covered by  
3 the schedule in K.S.A. 44-510d and amendments thereto. The extent  
4 of permanent partial general disability shall be the extent,  
5 expressed as a percentage, to which the ability of the employee  
6 to perform work in the open labor market and to earn comparable  
7 wages has been reduced, taking into consideration the employee's  
8 education, training, experience and capacity for rehabilitation,  
9 except that in any event the extent of permanent partial general  
10 disability shall not be less than percentage of functional  
11 impairment. Functional impairment means the extent, expressed as  
12 a percentage, of the loss of a portion of the total physiological  
13 capabilities of the human body as established by competent  
14 medical evidence.

15 (2) A health care provider's evaluation of the extent of  
16 permanent impairment shall be prepared in substantial compliance  
17 with the "Guides to the Evaluation of Permanent Impairment",  
18 published by the American medical association (hereinafter  
19 referred to as the AMA guides), the guidelines established by the  
20 American academy of orthopaedic surgeons, or any other recognized  
21 medical book or guide which is in published form when the  
22 examination is conducted. If the third edition of the AMA guides  
23 is used, it shall be used to rate permanent impairment as a  
24 result of injuries occurring on or after January 1, 1989.  
25 Revisions of the AMA guides, the guidelines established by the  
26 American academy of orthopaedic surgeons or any other recognized  
27 medical book or guide which is published on or after January 1,  
28 1989, shall not be used as the basis of a physician's evaluation  
29 until the January 1 following the year of publication of the  
30 revision of such medical book or guide. For injuries occurring  
31 prior to January 1, 1989, which are evaluated by a health care  
32 provider using the first or second edition of the AMA guides, the  
33 following shall apply: (A) For injuries occurring during the  
34 period from July 1, 1978, through October 31, 1984, the first  
35 edition of the AMA guides shall be used; and (B) for injuries

1 occurring during the period from November 1, 1984, through  
2 December 31, 1988, the second edition of the AMA guides shall be  
3 used. Nothing in this section shall be construed to prevent the  
4 presentation of other health care provider opinions or guides for  
5 the purpose of establishing that the degree of permanent  
6 impairment to which the employee would be entitled to would be  
7 more or less than the entitlement indicated in the AMA guides,  
8 the American academy of orthopaedic surgeons guides, or any other  
9 recognized medical book or guide.

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

29 (b) If an employee has received an injury for which  
30 compensation is being paid, and the employee's death is caused by  
31 other and independent causes, any payment of compensation already  
32 due the employee at the time of death and then unpaid shall be  
33 paid to the employee's dependents directly or to the employee's  
34 legal representatives if the employee left no dependent, but the  
35 liability of the employer for the payments of compensation not

1 yet due at the time of the death of such employee shall cease and  
2 be abrogated by the employee's death.

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

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

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

29 Sec. 6. K.S.A. 1989 Supp. 44-510g is hereby amended to read  
30 as follows: 44-510g. (a) A primary purpose of the workers  
31 compensation act shall be to restore to the injured employee the  
32 ability to perform work in the open labor market and to earn  
33 comparable wages, as determined pursuant to subsection (a) of  
34 K.S.A. 44-510e and amendments thereto. To this end, the director  
35 shall appoint, subject to the approval of the secretary, a

1 specialist in medical, physical and vocational rehabilitation,  
2 who shall be referred to as the rehabilitation administrator. The  
3 director shall appoint, subject to the approval of the secretary,  
4 four assistant rehabilitation administrators. The rehabilitation  
5 administrator and the assistant rehabilitation administrators  
6 shall be in the classified service under the Kansas civil service  
7 act. The rehabilitation administrator and the assistant  
8 rehabilitation administrators, subject to the direction of the  
9 rehabilitation administrator, shall: (1) Continuously study the  
10 problems of physical and vocational rehabilitation; (2)  
11 investigate and maintain a directory of all rehabilitation  
12 facilities, public or private, in this state, and, where such  
13 rehabilitation administrator determines necessary, in any other  
14 state; and (3) be fully knowledgeable regarding the eligibility  
15 requirements of all state, federal and other public medical,  
16 physical and vocational rehabilitation facilities and benefits.  
17 With respect to private facilities and agencies providing  
18 medical, physical and vocational rehabilitation services,  
19 including rehabilitation service programs provided directly by  
20 employers, the director shall approve as qualified such  
21 facilities, institutions, agencies, employer programs and  
22 physicians health care providers as are capable of rendering  
23 competent rehabilitation services. No such facility, institution,  
24 agency or employer program shall be considered qualified unless  
25 it is specifically equipped to provide rehabilitation services  
26 for persons suffering from either some specialized type of  
27 disability or some general type of disability within the field of  
28 occupational injury or disease, and is staffed with trained and  
29 qualified personnel and, with respect to medical and physical  
30 rehabilitation, unless it is supervised by a physician health  
31 care provider qualified to render such service. No physician  
32 health care provider shall be considered qualified unless such  
33 physician health care provider has had such experience and  
34 training as the director may deem necessary.

35 (b) Under the direction of the director, and subject to the



1 director's final approval, the rehabilitation administrator shall  
2 have the duties of directing and auditing medical, physical and  
3 vocational rehabilitation of employees in accordance with the  
4 provisions of this section.

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

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

24 (e) (1) If the employee has remained off work for 90 days or  
25 if it is apparent to the director the employee requires  
26 vocational rehabilitation services and, in either case, if  
27 approved rehabilitation services are not voluntarily furnished to  
28 the employee by the employer, the director, on such director's  
29 own motion or upon application of any party, may refer the  
30 employee to a qualified public agency, if the employee is  
31 eligible, or private agency or facility, or the employer's  
32 rehabilitation service program, if qualified, for evaluation  
33 assessment and for a report of the practicability of, need for,  
34 and kind of service, treatment, training or rehabilitation which  
35 is or may be necessary and appropriate to render such employee

1 able to perform work in the open labor market and to earn  
2 comparable wages, as determined pursuant to subsection (a) of  
3 K.S.A. 44-510e and amendments thereto. The costs of such  
4 evaluation assessment and report shall be at the expense of the  
5 employer. Each report shall contain a rehabilitation plan which  
6 shall adhere to the following priority listing of rehabilitation  
7 goals:

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

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

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

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

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

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

20 (2) Within 50 days after such referral, the report shall be  
21 submitted to and reviewed by the rehabilitation administrator and  
22 copies shall be furnished to each party. If all parties do not  
23 agree with the report, the rehabilitation administrator shall  
24 confer with the rehabilitation service provider, the employee and  
25 the employer to review the evaluation assessment and the proposed  
26 rehabilitation plan in the report. The rehabilitation  
27 administrator shall ensure the evaluation assessment and the  
28 rehabilitation plan are objective and reasonable and the  
29 rehabilitation goal is reasonably obtainable. Within 20 days  
30 after the initial review of the report, the rehabilitation  
31 administrator shall deliver copies of the report, together with  
32 the rehabilitation administrator's recommendations and any  
33 revisions of or objections to the rehabilitation plan, to each  
34 party, to the director and to the assigned administrative law  
35 judge, if there is one. Within 10 days after receipt of such

1 report, any party may request a hearing before the director on  
2 any matter contained in the report or any such recommendations or  
3 revisions. After affording the parties an opportunity to be heard  
4 and present evidence, the director:

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

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

24 (C) where vocational rehabilitation, reeducation or training  
25 is recommended in the report, or is deemed necessary by the  
26 director to restore to the employee the ability to perform work  
27 in the open labor market and to earn comparable wages, as  
28 determined pursuant to subsection (a) of K.S.A. 44-510e and  
29 amendments thereto, may direct the employee to the appropriate  
30 federal, state or other public facility or agency where such  
31 services will or may be provided at no cost to the employer,  
32 except as otherwise provided in this section, or, upon the  
33 request of the employer, to a qualified rehabilitation service  
34 program provided directly by the employer; and

35 (D) if the employee is not eligible for such vocational

1 rehabilitation, reeducation or training through any such state,  
2 federal or other public facility or agency, or where such  
3 services through such facilities or agencies are not available to  
4 the employee within a reasonable period of time, may order such  
5 services be provided at the expense of the employer by any  
6 qualified private agency or facility in this state or any state  
7 contiguous to this state or by a qualified rehabilitation service  
8 program provided directly by the employer.

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

24 (f) Where vocational rehabilitation, reeducation or training  
25 is to be furnished at the expense of the employer under this  
26 section, and such services require that the employee reside at or  
27 near a facility or institution, away from the employee's  
28 customary county of residence, either in or out of the state of  
29 Kansas, the reasonable costs of the employee's board, lodging and  
30 travel, not to exceed a maximum total of \$3,500 for any  
31 thirty-six-week period, shall be paid by the employer, except, in  
32 unusual cases where, after a hearing and the presentation of  
33 evidence the director finds the costs are clearly reasonable and  
34 necessary, the director may require by special order that the  
35 employer pay an additional amount for the costs of the employee's

1 board, lodging and travel of not more than \$2,000.

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

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

26 (i) Whenever the director determines there is a reasonable  
27 probability that with appropriate medical, physical or vocational  
28 rehabilitation, reeducation or training, a person, who is  
29 entitled to compensation for permanent total disability, partial  
30 disability or any other disability under the workers compensation  
31 act, may be rehabilitated to the extent such person can become  
32 able to perform work in the open labor market and to earn  
33 comparable wages, as determined pursuant to subsection (a) of  
34 K.S.A. 44-510e and amendments thereto, and it is for the best  
35 interests of such person to undertake such rehabilitation,

1 reeducation or training, if the injured employee without good  
2 cause refuses to undertake the rehabilitation, educational or  
3 training program determined by the director to be suitable for  
4 such employee or refuses to be evaluated under the provisions of  
5 subsection (e) and the refusal is not due to the employee's  
6 physical or mental ability to do so, the employee shall be  
7 considered as having elected not to participate in such  
8 rehabilitation, reeducation or training and the director may  
9 suspend the payment of any disability compensation until the  
10 employee consents to undertake such program or to be so  
11 evaluated. The director may reduce the disability compensation  
12 otherwise payable if any such refusal persists for a period in  
13 excess of 90 days, except disability compensation shall not be  
14 reduced to less than that payable for permanent partial  
15 disability in accordance with K.S.A. 44-510d and amendments  
16 thereto or for permanent partial general disability for  
17 functional impairment in accordance with K.S.A. 44-510e and  
18 amendments thereto.

19 (j) At such time as any medical, physical or vocational  
20 rehabilitation, reeducation or training has been completed under  
21 this section, the employer shall have the right, by the filing of  
22 an application with the director, to seek a modification of any  
23 award which has been rendered granting any compensation to the  
24 employee for any disability. Upon at least 20 days' notice by  
25 registered mail to all parties, the director shall set the  
26 application for hearing and the parties shall present all  
27 material and relevant evidence. In the event the director  
28 determines the employee is rehabilitated so such employee is able  
29 to perform work in the open labor market and to earn comparable  
30 wages, as determined pursuant to subsection (a) of K.S.A. 44-510e  
31 and amendments thereto, the director shall modify any award of  
32 compensation or, if no such award has been made, the director  
33 shall make an award to reflect only such disability, if any, as  
34 exists at the conclusion of such rehabilitation. Any award of  
35 partial disability, or modification of an existing award, made

1 pursuant to this subsection (j) shall be subject to the  
2 provisions of K.S.A. 44-510d and 44-510e and amendments thereto.

3 (k) For any week with respect to which the employee is  
4 receiving unemployment compensation benefits under the employment  
5 security law or any other unemployment compensation law of any  
6 other state or a similar federal law, no temporary total  
7 disability compensation or temporary partial disability  
8 compensation shall be payable under this section.

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

28 (b) After the service of such written demand, if the payment  
29 of disability compensation or medical compensation set forth in  
30 the written demand is not made within 20 days from the date of  
31 service of such written demand, plus any civil penalty, as  
32 provided in subsection (a), if such compensation was in fact past  
33 due, then all past due compensation and any such penalties shall  
34 become immediately due and payable. Service of written demand  
35 shall be required only once after the final award. Subsequent

1 failures to pay compensation, including medical compensation,  
2 shall entitle the employee to apply for the civil penalty without  
3 demand. The employee may maintain an action in the district court  
4 of the county where the cause of action arose for the collection  
5 of such past due disability compensation and medical  
6 compensation, any civil penalties due under this section and  
7 reasonable attorney fees incurred in connection with the action.

8 (c) The remedies of execution, attachment, garnishment or  
9 any other remedy or procedure for the collection of a debt now  
10 provided by the laws of this state shall apply to such action and  
11 also to all judgments entered under the provisions of K.S.A.  
12 44-529 and amendments thereto, except that no exemption granted  
13 by any law shall apply except the homestead exemption granted and  
14 guaranteed by the constitution of this state.

15 Sec. 8. K.S.A. 44-515 is hereby amended to read as follows:  
16 44-515. (a) After an employee sustains an injury, the employee  
17 shall, upon request of the employer, submit to an examination at  
18 any reasonable time and place by any one or more reputable  
19 ~~physicians,--as--defined--in--K.S.A.--44-508--and--amendments--thereto~~  
20 health care providers, selected by the employer, and shall so  
21 submit to an examination thereafter at intervals during the  
22 pendency of such employee's claim for compensation, upon the  
23 request of the employer, but the employee shall not be required  
24 to submit to an examination oftener than twice in any one ~~(1)~~  
25 month, unless required to do so in accordance with such orders as  
26 may be made by the director. Any employee so submitting to an  
27 examination or such employee's authorized representative shall  
28 upon request be entitled to receive and shall have delivered to  
29 such employee a copy of the ~~physician's~~ health care provider's  
30 report of such examination within ~~fifteen-(15)~~ 15 days after such  
31 examination, which report shall be identical to the report  
32 submitted to the employer. If the employee is notified to submit  
33 to an examination before any ~~physician~~ health care provider in  
34 any town or city other than the residence of the employee at the  
35 time that the employee received an injury, the employee shall not



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

22 (b) If the employee requests, such employee shall be  
23 entitled to have ~~physicians~~ health care providers of such  
24 employee's own selection present at the time to participate in  
25 such examination.

26 (c) Unless a report is furnished as provided in subsection  
27 (a) and unless there ~~be~~ is a reasonable opportunity thereafter  
28 for the ~~physicians~~ health care providers selected by the employee  
29 to participate in the examination in the presence of the  
30 ~~physicians~~ health care providers selected by the employer, the  
31 ~~physicians~~ health care providers selected by the employer or  
32 employee shall not be permitted afterwards to give evidence of  
33 the condition of the employee at the time such examination was  
34 made.

35 Except as provided herein in this section, there shall be no

1 disqualification or privilege preventing the furnishing of  
 2 reports by or the testimony of any physician health care provider  
 3 who actually makes an examination or treats an injured employee,  
 4 prior to or after an injury.

5 Sec. 9. K.S.A. 44-516 is hereby amended to read as follows:  
 6 44-516. In case of a dispute as to the injury, the director as  
 7 ~~hereinafter--provided--may, at his,~~ in the director's discretion,  
 8 or upon request of either party, may employ one or more neutral  
 9 physicians health care providers, not exceeding three (3) in  
 10 number, who shall be of good standing and ability, ~~whose duty--it~~  
 11 ~~shall---be---to.~~ The health care providers shall make such  
 12 examinations of the injured ~~workman~~ employee as the director may  
 13 direct.

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

32 Sec. 11. K.S.A. 44-519 is hereby amended to read as follows:  
 33 44-519. No report of any examination of any employee by a  
 34 ~~physician-or-surgeon, as-hereinbefore-in-this-act--provided--for,~~  
 35 ~~nor--any~~ health care provider, as provided for in the workers

1. compensation act and no certificate issued or given by the  
2 physician---or---surgeon health care provider making such  
3 examination, shall be competent evidence in any proceeding for  
4 the determining or collection of compensation unless supported by  
5 the testimony of such physician-or-surgeon health care provider,  
6 if this testimony is admissible, nor and shall not be competent  
7 evidence in any case where testimony of such physician-or-surgeon  
8 health care provider is not admissible.

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

29       (b) If the director finds that the employee has returned to  
30 work for the same employer in whose employ the employee was  
31 injured or for another employer and is earning or is capable of  
32 earning the same or higher wages than the employee did at the  
33 time of the accident, or is capable of gaining an income from any  
34 trade or employment which is equal to or greater than the wages  
35 the employee was earning at the time of the accident, or finds

1 that the employee has absented and continues to be absent so that  
2 a reasonable examination cannot be made of the employee by a  
3 physician health care provider selected by the employer, or has  
4 departed beyond the boundaries of the United States, the director  
5 may modify the award and reduce compensation or may cancel the  
6 award and end the compensation.

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

10 (d) Any modification of an award under this section on the  
11 basis that the functional impairment or work disability of the  
12 employee has increased or diminished shall be effective as of the  
13 date that the increase or diminishment actually occurred, except  
14 that in no event shall the effective date of any such  
15 modification be more than six months prior to the date the  
16 application was made for review and modification under this  
17 section.

18 Sec. 13. K.S.A. 1989 Supp. 44-534a is hereby amended to read  
19 as follows: 44-534a. (a) After filing an application for a  
20 hearing pursuant to K.S.A. 44-534 and amendments thereto, the  
21 employee may make application for a preliminary hearing, in such  
22 form as the director may require by rules and regulations, on the  
23 issues of the furnishing of medical treatment and the payment of  
24 temporary total disability compensation and for any matter  
25 relative to the furnishing of vocational rehabilitation in  
26 accordance with and subject to the provisions of K.S.A. 44-510g  
27 and amendments thereto. At least seven days prior to filing an  
28 initial application for a preliminary hearing, the employee shall  
29 notify the employer of the employee's intent to file such an  
30 application and shall confirm such notice by letter. Such prior  
31 seven-day notice shall be required to be given to the employer  
32 only once in any case. Upon receipt of an application for such a  
33 preliminary hearing, the director shall give seven days' written  
34 notice by mail to the employer of the date set for such hearing.  
35 Such preliminary hearing shall be summary in nature and shall be

1 held by the director or an administrative law judge in any county  
2 designated by the director or administrative law judge, and the  
3 director or administrative law judge shall exercise such powers  
4 as are provided for the conduct of full hearings on claims under  
5 the workers compensation act. Upon a preliminary finding that the  
6 injury to the employee is compensable and in accordance with the  
7 facts presented at such preliminary hearing, the director or  
8 administrative law judge may make a preliminary award of medical  
9 compensation and temporary total disability compensation to be in  
10 effect pending the conclusion of a full hearing on the claim. If  
11 temporary total compensation is awarded, such compensation may be  
12 payable from the date of filing the application, except that if  
13 the administrative law judge finds from the evidence presented  
14 that there were one or more periods of temporary total disability  
15 prior to such filing date, temporary total compensation may be  
16 payable for all periods of temporary total disability prior to  
17 such date of filing. The decision in such preliminary hearing  
18 shall be rendered within five days of the conclusion of such  
19 hearing. No such preliminary findings or preliminary awards shall  
20 be appealable by any party to the proceedings, and the same shall  
21 not be binding in a full hearing on the claim, but shall be  
22 subject to a full presentation of the facts.

23 (b) If compensation in the form of medical benefits,  
24 temporary total disability benefits or vocational rehabilitation  
25 benefits has been paid by the employer or the employer's  
26 insurance carrier either voluntarily or pursuant to a preliminary  
27 award entered under this section and, upon a full hearing on the  
28 claim, the amount of compensation to which the employee is  
29 entitled is found to be less than the amount of compensation paid  
30 or is totally disallowed, the employer and the employer's  
31 insurance carrier shall be reimbursed from the workers  
32 compensation fund established in K.S.A. 44-566a and amendments  
33 thereto, for all amounts of compensation so paid which are in  
34 excess of the amount of compensation the employee is entitled to  
35 as determined in the full hearing on the claim. The director

1 shall determine the amount of compensation paid by the employer  
2 or insurance carrier which is to be reimbursed under this  
3 subsection, and the director shall certify to the commissioner of  
4 insurance the amount so determined. Upon receipt of such  
5 certification, the commissioner of insurance shall cause payment  
6 to be made to the employer or the employer's insurance carrier in  
7 accordance therewith.

8 Sec. 14. K.S.A. 44-551 is hereby amended to read as follows:

9 44-551. (a) The duties of the assistant directors of workers  
10 compensation shall include but not be limited to acting in the  
11 capacity of an administrative law judge and the conducting of  
12 director reviews, provided the director shall be the final  
13 approving authority for such director reviews.

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

29 (2) (A) If an administrative law judge has entered a  
30 preliminary award under K.S.A. 44-534a and amendments thereto, a  
31 director's review shall not be conducted under this section  
32 unless it is believed that the administrative law judge exceeded  
33 the administrative law judge's jurisdiction in granting or  
34 denying the relief requested at the preliminary hearing.  
35 Director's orders on review of preliminary findings or

1 preliminary awards issued pursuant to K.S.A. 44-534a and  
2 amendments thereto shall be issued within 30 days from the date  
3 the review was submitted on the record where oral arguments were  
4 not requested and within 30 days from the date oral arguments  
5 were presented by the parties. Director's orders on any other  
6 acts, findings, awards, decisions, rulings or modifications of  
7 findings or awards made by an administrative law judge shall be  
8 issued within 90 days from the date the review was submitted on  
9 the record where oral arguments were not requested or within 90  
10 days from the date oral arguments were presented by the parties.

11 (B) If an order on review is not issued by the director  
12 within the applicable time period prescribed by subsection  
13 (b)(2)(A), medical compensation and any disability compensation  
14 as provided in the award of the administrative law judge shall be  
15 paid commencing with the first day after such time period and  
16 shall continue to be paid until the director's order is issued,  
17 except that no payments shall be made under this provision for  
18 any period before the first day after such time period. Nothing  
19 in this section shall be construed to limit or restrict any other  
20 remedies available to any party to a claim under any other  
21 statute.

22 (C) In any case in which the final award of an  
23 administrative law judge is appealed to the director for review  
24 under this section and in which the compensability is not an  
25 issue to be decided on review by the director, medical  
26 compensation shall be payable in accordance with the award of the  
27 administrative law judge and shall not be stayed pending such  
28 review. The employee may proceed under K.S.A. 44-534a and  
29 amendments thereto and may have a hearing in accordance with that  
30 statute to enforce the provisions of this subsection.

31 (c) Each assistant director and each administrative law  
32 judge or special administrative law judge shall be allowed all  
33 reasonable and necessary expenses actually incurred while in the  
34 actual discharge of official duties in administering the  
35 workmen's workers compensation act, but such expenses shall be

1 sworn to by the person incurring the same and be approved by the  
2 secretary.

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

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

21 Sec. 15. K.S.A. 1989 Supp. 44-556 is hereby amended to read  
22 as follows: 44-556. (a) Any action of the director pursuant to  
23 the workers compensation act shall be subject to review in  
24 accordance with the act for judicial review and civil enforcement  
25 of agency actions. Such review shall be upon questions of law and  
26 fact as presented and shown by a transcript of the evidence and  
27 proceedings as presented, had and introduced before the director.  
28 The venue of the action shall be the county where the cause of  
29 action arose or the county mutually agreed upon by all of the  
30 parties. Any such action shall have precedence over all other  
31 hearings except those of like character, and shall be heard not  
32 later than the first term of the district court after the appeal  
33 has been perfected, and the court shall decide all such cases  
34 within 60 days after submission. The appealing party shall notify  
35 the director when judgment is issued by the court. If judgment is



1 not issued within 60 days of submission, ~~the--appealing--party~~  
2 ~~shall~~ any party may notify the director to that effect. The  
3 director will advise the judge to whom the case was submitted  
4 that 60 days has elapsed since submission of the case and request  
5 that a decision be rendered. If no decision is forthcoming within  
6 30 days of such request by the director, the director will advise  
7 the supreme court justice having jurisdiction over such judge of  
8 all of the facts in regard to the review and the failure of the  
9 judge to render a decision as required by this section.

10 (b) On any such review the district court shall have  
11 jurisdiction to grant or refuse compensation, or to increase or  
12 diminish any award of the director as justice may require. No  
13 compensation shall be due or payable until the expiration of the  
14 time for commencing an action for review and then the payment of  
15 past due compensation awarded by the director shall not be  
16 payable if, within such time a petition for review, has been  
17 filed in accordance with the act for judicial review and civil  
18 enforcement of agency actions. Except as otherwise provided by  
19 this section, the right of review shall include the right to make  
20 no payments of such compensation until the review has been  
21 decided by the district court if the employer is insured for  
22 workers compensation liability with an insurance company  
23 authorized to do business in this state, if the employer is  
24 maintaining membership in a qualified group-funded workers  
25 compensation pool under K.S.A. 44-581 through 44-591 and  
26 amendments thereto, if the employer is maintaining membership in  
27 a group-funded pool under the Kansas municipal group-funded pool  
28 act which includes workers compensation and employers' liability  
29 under the workers compensation act, or if the employer is  
30 currently approved by the director as a self-insurer and has  
31 filed a bond with the district court in accordance with K.S.A.  
32 44-530 and amendments thereto. Commencement of an action for  
33 review shall not stay the payment of compensation due for the  
34 ten-week period next preceding the director's decision and for  
35 the period of time after the director's decision and prior to the

1 decision of the district court on review.

2 (c) If review of the decision of the district court is  
3 sought pursuant to K.S.A. 77-623 and amendments thereto, the  
4 compensation payable under the decision of the district court  
5 shall not be stayed pending such review. Review of the decision  
6 of the district court shall take precedence over other cases  
7 except cases of the same character.

8 (d) (1) If compensation, including medical benefits,  
9 temporary total disability benefits or vocational rehabilitation  
10 benefits, has been paid to the worker by the employer or the  
11 employer's insurance carrier during the pendency of review by the  
12 district court or by appellate courts and the amount of  
13 compensation awarded by the director or the district court is  
14 reduced or totally disallowed by the decision on the appeal or  
15 review, the employer and the employer's insurance carrier, except  
16 as otherwise provided in this section, shall be reimbursed from  
17 the workers compensation fund established in K.S.A. 44-566a and  
18 amendments thereto for all amounts of compensation so paid which  
19 are in excess of the amount of compensation that the worker is  
20 entitled to as determined by the final decision on review. The  
21 director shall determine the amount of compensation paid by the  
22 employer or insurance carrier which is to be reimbursed under  
23 this subsection (d)(1), and the director shall certify to the  
24 commissioner of insurance the amount so determined. Upon receipt  
25 of such certification, the commissioner of insurance shall cause  
26 payment to be made to the employer or the employer's insurance  
27 carrier in accordance therewith.

28 (2) If any temporary or permanent partial disability or  
29 temporary or permanent total disability benefits have been paid  
30 to the worker by the employer or the employer's insurance carrier  
31 during the pendency of review by the district court or by  
32 appellate courts and the amount of compensation awarded for such  
33 benefits by the director or the district court is reduced by the  
34 decision on the appeal or review and the balance of compensation  
35 due the worker exceeds the amount of such reduction, the employer

1 and the employer's insurance carrier shall receive a credit which  
2 shall be applied as provided in this subsection (d)(2) for all  
3 amounts of such benefits which are in excess of the amount of  
4 such benefits that the worker is entitled to as determined by the  
5 final decision on review or appeal. If a lump-sum amount of  
6 compensation is due and owing as a result of the decision of the  
7 district court, the credit under this subsection (d)(2) shall be  
8 applied first against such lump-sum amount. If there is no such  
9 lump-sum amount or if there is any remaining credit after a  
10 credit has been applied to a lump-sum amount due and owing, such  
11 credit shall be applied against the last compensation payments  
12 which are payable for a period of time after the final decision  
13 on review or appeal so that the worker continues to receive  
14 compensation payments after such final decision until no further  
15 compensation is payable after the credit has been satisfied. The  
16 credit allowed under this subsection (d)(2) shall not be applied  
17 so as to stop or reduce benefit payments after such final  
18 decision, but shall be used to reduce the period of time over  
19 which benefit payments are payable after such final decision. The  
20 provisions of this subsection (d)(2) shall be applicable in all  
21 cases under the workers compensation act in which a final award  
22 is issued by an administrative law judge on or after July 1,  
23 1990.

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

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

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

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

29 Sec. 16. K.S.A. 44-5a04 is hereby amended to read as  
 30 follows: 44-5a04. (a) Except as hereinafter otherwise provided in  
 31 this act "disablement" means the event of an employee ~~or workman~~  
 32 becoming actually incapacitated, partially or totally, because of  
 33 an occupational disease, from performing ~~his~~ the employee's work  
 34 in the last occupation in which injuriously exposed to the  
 35 hazards of such disease, and "disability" means the state of

1 being so incapacitated: ~~Provided~~.

2 (b) The director may cancel the award and end the  
 3 compensation if the director ~~shall find that the workman~~ finds  
 4 that the employee (1) has returned to work for the same employer  
 5 in whose employ ~~he~~ the employee was disabled or for another  
 6 employer and is capable of earning the same or higher wages than  
 7 ~~he~~ the employee did at the time of the disablement, or is capable  
 8 of gaining an income from any trade or employment which is equal  
 9 to or greater than the wages ~~he~~ the employee was earning at the  
 10 time of the disablement, ~~or shall find;~~

11 (2) finds that the ~~workman has absented himself~~ employee is  
 12 absent and continues to be absent himself so that a reasonable  
 13 examination cannot be made of ~~him~~ the employee by a ~~physician or~~  
 14 surgeon health care provider selected by the employer; or

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

17 Sec. 17. K.S.A. 44-5a18 is hereby amended to read as  
 18 follows: 44-5a18. Upon the filing or service of a claim for  
 19 compensation for death from an occupational disease where an  
 20 autopsy is necessary to accurately and scientifically ascertain  
 21 and determine the cause of death, such autopsy shall be ordered  
 22 by the director ~~of workers' compensation~~. Such autopsy shall be  
 23 made under the supervision of a medical examiner appointed by  
 24 ~~said the~~ director. ~~Such~~ The medical examiner shall be a ~~duly~~  
 25 ~~licensed physician,~~ health care provider who is a specialist in  
 26 such examinations ~~and~~. The medical examiner shall perform or  
 27 attend such autopsy and shall certify ~~his or her~~ the medical  
 28 examiner's findings in a report of ~~such~~ the autopsy. ~~Such~~ The  
 29 report of autopsy shall be filed with the director and shall be a  
 30 public record. The employer and claimants shall be given  
 31 reasonable notice of such autopsy and each shall have the right  
 32 to have a physician health care provider of ~~his or her~~ the  
 33 employer or claimant's own choosing present at the time. The  
 34 director also may exercise such authority on ~~his or her~~ the  
 35 director's own motion or on application made to the director at

1 any time, upon the presentation of facts showing that a  
2 controversy may exist in regard to the cause of death or the  
3 existence of any occupational disease.

4 Sec. 18. K.S.A. 44-515, 44-516, 44-518, 44-519, 44-551,  
5 44-5a04 and 44-5a18 and K.S.A. 1989 Supp. 44-501, 44-508, 44-510,  
6 44-510c, 44-510e, 44-510g, 44-512a, 44-528, 44-534a and 44-556  
7 are hereby repealed.

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