

Approved June 18, 1992
Date

MINUTES OF THE House COMMITTEE ON Labor and Industry

The meeting was called to order by Representative Anthony Hensley
Chairperson

1:45 ~~am~~/p.m. on April 2, 1992 in room 526-S of the Capito.

All members were present except:

Committee staff present:

Jim Wilson, Revisor of Statutes
Jerry Wilson, Principal Analyst
Barbara Dudney, Committee Secretary

Conferees appearing before the committee:

The meeting was called to order at 1:45 p.m. by the chairman, Rep. Anthony Hensley.

Chairman Hensley announced that the committee would be discussing the proposed amendment "Hughes" a section of the bill that amends K.S.A. 1991 Supp. 44-510e.

Bill Morrissey, acting Director, Div. of Workers' Compensation explained some differences to the committee.

Rep. Denise Everhart moved to favorably adopt amendment K 1144-510e. Rep. Jan Pauls seconded the motion. Motion carried.

Rep. Tim Carmody reported on IRS 2741, Overview - Creation of the Board of Review. (attachment #1).

Rep. Diane Gjerstad made a motion to have an interim study on HB 2523. Rep. Eloise Lynch seconded the motion. Motion carried.

Rep. Everhart made a motion to pass Substitute House Bill 3039. Rep. Bob Grant seconded the motion. Motion carried.

Rep. Susan Wagle made a motion to take from the table SB 275. Rep. Tim Carmody seconded the motion. Motion carried.

Rep. Darrel Webb made a substitute motion to amend to eliminate the waiting week. Rep. Everhart seconded the motion. Motion carried.

Rep. Wagle moved to pass SB 275 as amended. Rep. Carmody seconded the motion. Motion carried.

Meeting adjourned at 2:20 p.m.

presented to subcomm
but not acted on
by subcomm.

OVERVIEW

CREATION OF BOARD OF REVIEW

The Secretary's Committee on workers' compensation discussed for several months creation of a Board of Review in workers' compensation, in essence removing judicial functions from the Director. The Director would then become a chief administrative officer, and there would be a reduction in the number of assistant directors.

We believe the modifications to the bill proposed by the KCCI represents the reflections and recommendations of the Secretary's Committee. The singular stumbling block when the Secretary's Committee failed to reach agreement on the board was the "reverse sunset" of *de novo* review by the district court.

BASIC CONCEPTS

1. CREATION OF A FIVE MEMBER JUDICIAL PANEL.

Five members were chosen over three members so that a split of decision makers would not lead to a singular person making all the decisions. Five members would also allow for additional duties besides the rendering of decisions.

2. APPOINTMENT BY SECRETARY.

These are judicial officers, and the attempt was to mirror the way we pick district court judges. The idea was that this procedure has been in place and worked relatively well over the years. The nominating committee would be the bi-polar interests of labor and industry. In concept, both labor and industry want the same qualities in judicial officers. Three names should be sent to keep the political process "in the loop".

3. APPEALS FROM THE BOARD.

For many years, *de novo* district court review has existed. This is a drastic proposed change, and one school of thought was to leave the district court in place while the panel underwent whatever "growing pains" it may face. It is strongly anticipated that over the years to come *de novo* review will have little meaning. District courts will have a tendency to defer to the "learned panel" and few appeals would be anticipated. In turn, this would lead to statewide consistency.

CHANGES

The following pages have been modified: 1, 2, 3, 4, 31, 33, 41, 42, 44, 49, 52, 53, 54, 55, 56, 57, and 58.

Labor + Industry
4-2-92
Attachment #1

HOUSE BILL NO. _____

By Committee on Labor and Industry

AN ACT concerning the workers compensation act; relating to administration thereof and appeals of decisions and awards thereunder; establishing the workers compensation board; prescribing powers, duties and functions of the board; amending K.S.A. 44-525, 44-532a, 44-534, 44-549, 44-553, 44-554, 44-557, 44-569, 44-569a, 44-577 and 75-5708 and K.S.A. 1991 Supp. 44-508, 44-510, 44-510b, 44-510c, 44-510d, 44-510g, 44-511, 44-512, 44-512b, 44-523, 44-528, 44-534a, 44-551, 44-552, 44-555, 44-556, 44-566a, 44-567 and 44-5a04 and repealing the existing sections; also repealing K.S.A. 1991 Supp. 44-566b.

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

ON AND AFTER
July 1, 1992

New Section 1. (a) There is hereby established the workers compensation board. The board shall have ~~exclusive~~ jurisdiction to review all decisions, findings, orders and awards of compensation of administrative law judges under the workers compensation act and all decisions, findings, orders and awards of the director under the workers compensation act. The board shall be within the division of workers compensation of the department of human resources and all budgeting, personnel, purchasing and related management functions of the board shall be administered under the supervision and direction of the secretary of human resources. The board shall consist of ~~three~~ members who shall be appointed by the secretary in accordance with this section and who shall each serve for a term of six years, except as provided for the first members appointed to the board under subsection (f).

delete

FIVE

(b) Each board member shall be an attorney regularly admitted to practice law in Kansas for a period of at least seven years and shall have engaged in the active practice of law during

such period as a lawyer, judge of a court of record or any court in Kansas or a full-time teacher of law in an accredited law school, or any combination of such types of practice.

(c) Each board member shall receive an annual salary in an amount equal to the salary prescribed for a district judge designated as administrative judge of a district court of Kansas. The board members shall devote full time to the duties of such office and shall not engage in the private practice of law during their term of office. No board member may receive additional compensation for official services performed by the board member. Each board member shall be reimbursed for expenses incurred in the performance of such official duties under the same circumstances and to the same extent as judges of the district court are reimbursed for such expenses.

(d) Applications for membership on the board shall be submitted to the director of workers compensation. The director shall determine if an applicant meets the qualifications for membership on the board prescribed in subsection (b). Qualified applicants for the board will be submitted by the director to the workers compensation board nominating committee for consideration.

(e) There is hereby established the workers compensation board nominating committee which shall be composed of two members appointed as follows: The Kansas AFL-CIO and the Kansas chamber of commerce and industry shall each select one representative to serve on the workers compensation board nominating committee and shall give written notice of the selection to the secretary who shall appoint such representatives to the committee. In the event of a vacancy occurring for any reason on the nominating committee, the respective member shall be replaced by the appointing organization with written notice of the appointment to the secretary of human resources within 30 days of such vacancy.

(f) (1) Upon being notified of any vacancy on the board or of the need to appoint a member pro tem under subsection (i), the nominating committee shall consider all qualified applicants for

the vacant position on the board or the member pro tem position and nominate a qualified person therefor. The nominating committee shall be required to reach unanimous agreement on any nomination to the board. ~~The secretary shall accept and appoint each person nominated by the nominating committee to the position on the board for which the person is nominated, unless the secretary can demonstrate how the nominee fails to meet the qualifications prescribed in subsection (b), in which case the secretary shall reject the person nominated and request the nominating committee to submit another nomination for that position.~~

INSERT

(2) For the purposes of selecting the first members of the board, the nominating committee shall nominate ~~one~~ individual to serve a term of two years, ~~one~~ individual to serve a term of four years and one individual to serve a term of six years. Each member shall hold office for the term of the appointment and until the successor shall have been appointed. Successors to such members shall be appointed for terms of six years.

two

two

(3) If a vacancy should occur on the board during the term of a member, the nominating committee shall nominate an individual to complete the remainder of the unexpired portion of the term _____

The vacancy shall be filled in the same manner as the original selection.

(g) Following the completion of a term, board members who wish to be considered for reappointment to the board shall be deemed to have met the qualification requirements for selection to the board and shall be considered for renomination by the workers compensation board nominating committee.

by the Secretary

(h) The members of the board shall annually elect one member to serve as chairperson and one member to serve as vice-chairperson of the board.

(i) If illness or other temporary disability of a member of the board will not permit the member to serve during a case or in any case in which a member of the board must be excused from serving because of a conflict or is otherwise disqualified with regard to such case, the director shall notify the workers

The nominating committee shall send three (3) names to the secretary, and the secretary shall select one (1). The persons not selected to fill a particular vacancy on the board shall not be prohibited from having their names resubmitted.

compensation nominating committee of the need to appoint a member pro tem. Upon receipt of such notice, the committee shall act as soon as possible and nominate a qualified person to serve as member pro tem in such case in accordance with subsection (e). (f)(1) Each member pro tem shall receive compensation at the same rate as a member of the board receives, prorated for the days of actual service as a member pro tem and shall receive expenses under the same circumstances and to the same extent as a member of the board receives. Each member pro tem shall have all the powers, duties and functions of a member of the board with regard to the case.

(j) The board shall sit and maintain its principal offices in Topeka, Kansas, and the board may conduct hearings at a courthouse of any county in Kansas. The secretary of human resources shall provide a courtroom and other suitable quarters in Topeka, Kansas, for the use of the board and its staff. When the board conducts hearings at any location other than in Topeka, Kansas, the director shall make suitable arrangements for such hearings. Subject to the provisions of appropriation acts, the director shall provide such supplies and equipment and shall appoint such support personnel as may be necessary for the board to fulfill the duties imposed by this act, subject to approval by the secretary.

until a
Replacement is
named by the
Secretary

(k) All members of the board shall sit and hear and determine each matter before the board. All decisions, reviews and determinations by the board shall be approved in writing by at least two board members. Whenever the board enters a final - three order in any proceeding, the board shall make written findings of fact forming the basis of its determination and final order. The findings of the board shall be made a part of the final order. The board shall mail a copy of the final order of the board to all parties to the proceeding within three days following the issuance of the final order.

(l) This section shall be construed as supplemental to and a - (m) part of the workers compensation act.

(1) In the event the board determines that there is a backlog in the jurisdiction of any administrative law judge relative to the scheduling of regular hearings, preliminary hearings, rendering awards, or any other matter, the chairperson shall appoint two (2) members from the board to relieve the backlog in any manner necessary, including the taking of evidence, rendering of decisions, or otherwise. In the event an appeal is taken in any manner in the cause of action, those two (2) members identified herein shall be excluded from all such proceedings.

subsection (k).

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

*Administrative
Law Judge*

(f) Where vocational rehabilitation, reeducation or training is to be furnished at the expense of the employer under this section, and such services require that the employee reside at or near a facility or institution, away from the employee's customary county of residence, either in or out of the state of Kansas, the reasonable costs of the employee's board and lodging, not to exceed a maximum total of \$3,500 for any 36-week period, shall be paid by the employer, except, in unusual cases where, after a hearing and the presentation of evidence the director finds the costs are clearly reasonable and necessary, the director may require by special order that the employer pay an additional amount for the costs of the employee's board and lodging of not more than \$2,000.

(g) The employer shall pay temporary total disability compensation during any period of vocational rehabilitation, reeducation or training, computed as provided in K.S.A. 44-510c and amendments thereto, but the employer shall receive credit for any weekly, monthly or other monetary payments made to the employee or such employee's family by any state, federal or other

There shall be no right of appeal to the district court, or the Kansas appellate courts from a judgment of the board sustaining or overruling any such special order of the administrative law judge.

considered as having elected not to participate in such rehabilitation, reeducation or training and the director may suspend the payment of any disability compensation until the employee consents to undertake such program or to be so evaluated. The director may reduce the disability compensation otherwise payable if any such refusal persists for a period in excess of 90 days, except disability compensation shall not be reduced to less than that payable for permanent partial disability in accordance with K.S.A. 44-510d and amendments thereto or for permanent partial general disability for functional impairment in accordance with K.S.A. 44-510e and amendments thereto.

Administrative
Law Judge

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

(k) The employer has the right to select the qualified agency or facility to provide vocational assessment,

perform services in behalf of the labor union or other association and who are not paid as full-time employees of the labor union or other association and who are injured or suffer occupational disease in the course of the performance of duties in behalf of the labor union or other association shall recover compensation benefits under the workers compensation act from the labor union or other association if the labor union or other association files an election with the director to bring its members who perform such services under the coverage of the workers compensation act.

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

Sec. 9. K.S.A. 1991 Supp. 44-512 is hereby amended to read as follows: 44-512. Workers compensation payments shall be made at the same time, place and in the same manner as the wages of the worker were payable at the time of the accident, but upon the application of either party the director administrative law judge may modify such requirements in a particular case as the ~~director~~ deems just, except that: (a) Payments from the ~~workers~~ workers compensation fund established by K.S.A. 44-566a and amendments thereto shall be made monthly only; (b) payments from the state workmen's compensation self-insurance fund established by K.S.A. 44-575 and amendments thereto shall be made monthly ~~except that workers who were receiving payments from such fund more often than monthly prior to July 17 1980 shall be paid workers compensation payments from such fund to which they are entitled at the times that the officers and employees of the state agency which employed the worker at the time of the accident are paid compensation after July 17 1980~~; and (c) whenever temporary total disability compensation is to be paid under the workers compensation act, payments shall be made only in cash, by check

Administrative Law Judge

or in the same manner that the employee is normally compensated for salary or wages and not by any other means, except that any such compensation may be paid by warrant of the director of accounts and reports issued for payment of such compensation from the workers' workers compensation fund or the state workmen's compensation self-insurance fund under the workers compensation act.

Sec. 10. K.S.A. 1991 Supp. 44-512b is hereby amended to read as follows: 44-512b. (a) Whenever the administrative law judge, director or court board finds, upon a hearing conducted pursuant to K.S.A. 44-523 and amendments thereto or upon review or appeal of an award entered in such a hearing, that there was not just cause or excuse for the failure of the employer or insurance carrier to pay, prior to an award, the compensation claimed to the person entitled thereto, the employee shall be entitled to interest on the amount of the disability compensation found to be due and unpaid at the rate of interest prescribed pursuant to subsection (e)(1) of K.S.A. 16-204 and amendments thereto. Such interest shall be assessed against the employer or insurance carrier liable for the compensation and shall accrue from the date such compensation was due.

(b) Interest assessed pursuant to this section shall be considered a penalty and shall not be considered a loss or a loss adjustment expense by an insurance carrier in the promulgation of rates for workers compensation insurance.

(c) This section shall be part of and supplemental to the workers compensation act.

Sec. 11. K.S.A. 1991 Supp. 44-523 is hereby amended to read as follows: 44-523. (a) The ~~director~~, administrative law judge, ~~court board~~ *board, NUR* shall not be bound by technical rules of procedure, *district court* but shall give the parties reasonable opportunity to be heard and to present evidence, insure an employee an expeditious hearing and act reasonably without partiality.

(b) Whenever a party files an application for hearing pursuant to K.S.A. 44-534 and amendments thereto, the matter

law judge and shall specify the amount due and unpaid by the employer to the employee up to the date of the award, if any, and the amount of the payments thereafter to be paid by the employer to the employee, if any, and the length of time such payment shall continue. The award of the director or administrative law judge shall be effective the day following the date noted in the award. AWARDS
AND
BOARD

(b) No award shall be or provide for payment of compensation in a lump sum, except as to such portion of the compensation as shall be found to be due and unpaid at the time of the award, or except at the discretion of the director on settlement agreements, and credit shall be given to the employer in such award for any amount or amounts paid by the employer to the employee as compensation prior to the date of the award.

Sec. 13. K.S.A. 1991 Supp. 44-528 is hereby amended to read as follows: 44-528. (a) Any award or modification thereof agreed upon by the parties, except lump-sum settlements approved by the director or administrative law judge, whether the award provides for compensation into the future or whether it does not, may be reviewed by the director for good cause shown upon the application of the employee, employer, dependent, insurance carrier or any other interested party. In connection with such review the director may appoint one or two health care providers to examine the employee and report to the director. The director administrative law judge shall hear all competent evidence offered and if the director administrative law judge finds that the award has been obtained by fraud or undue influence, that the award was made without authority or as a result of serious misconduct, that the award is excessive or inadequate or that the functional impairment or work disability of the employee has increased or diminished, the director administrative law judge may modify such award, or reinstate a prior award, upon such terms as may be just, by increasing or diminishing the compensation subject to the limitations provided in the workers compensation act.

44-549. (a) All hearings upon all claims for compensation under the workmen's workers compensation act shall be held by the director, ~~or~~ administrative law judge, in the county in which the accident occurred, unless otherwise mutually agreed by the employee and employer. The award, finding, decision or order of an administrative law judge when filed in the office of the director shall be deemed to be the final award, finding, decision or order of the director administrative law judge.

(b) The ~~director shall~~ and the board, for the purpose of the workmen's workers compensation act, shall have power to administer oaths, certify to official acts, take depositions, issue subpoenas, compel the attendance of witnesses and the production of books, accounts, papers, documents, and records to the same extent as is now conferred on district courts of this state under the code of civil procedure.

Administrative Law Judge

Sec. 18. K.S.A. 1991 Supp. 44-551 is hereby amended to read as follows: 44-551. (a) The duties of the assistant directors of workers compensation shall ~~include but not be limited to acting in the capacity of an administrative law judge and the conducting of director reviews, provided the director shall be the final approving authority for such director reviews.~~

be such duties as delegated by the Director

(b) (1) Administrative law judges ~~shall have power to~~ administer oaths, certify official acts, take depositions, issue subpoenas, compel the attendance of witnesses and the production of books, accounts and, papers, documents and records to the same extent as is conferred on the district courts of this state, and under the direction of the director, may conduct an investigation, inquiry, or hearing ~~in the same manner and with like effect as if done by the director~~ on all matters before the administrative law judges. All acts, findings, awards, decisions, rulings or modifications of findings or awards made by an administrative law judge, shall be subject to review and approval by the director board upon written request of any interested party within 10 days and if no such request is made, then the director board shall approve such actions, findings,

and members of the board

1 44-552. Record of hearing; certified shorthand reporter;
2 transcript; costs. The director ~~or administrative law judge shall~~
3 at each hearing appoint a certified shorthand reporter, ~~who may be~~
4 ~~within the classified service of the Kansas civil service act,~~ to
5 attend each hearing where testimony is introduced, and preserve a
6 complete record of all oral or documentary evidence introduced and
7 all proceedings had at such hearing ~~unless such appointment be~~
8 ~~waived by mutual agreement. At the conclusion of the hearing in~~
9 ~~any case, if neither party has requested opportunity to file~~
10 ~~briefs, the administrative law judge may read into the record for~~
11 ~~certification to the director such stipulations, findings, rulings~~
12 ~~or orders the administrative law judge deems expedient to the early~~
13 ~~disposition of the case, and if the administrative law judge uses~~
14 ~~such procedure, and with the consent of the parties, no transcript~~
15 ~~of the record of the hearing shall be made, except that part which~~
16 ~~is read into the record by the administrative law judge.~~

17 All testimony introduced and proceedings had in hearings shall
18 be taken down by such reporter, ~~and if an action for review is~~
19 ~~commenced or if the director, or either party or the best interests~~
20 ~~of the administration of justice, so instructs, the reporter shall~~
21 ~~transcribe the reporter's notes of such hearing. If an action for~~
22 ~~review is commenced, the cost of preparing a transcript shall be~~
23 ~~paid as provided by K.S.A. 77-620 and amendments thereto. If no~~
24 ~~action for review is commenced, The cost of preparing a transcript~~
25 shall be taxed as costs in the case at the discretion of the
26 director in accordance with fair and customary rates charged in the
27 state of Kansas. ~~All official notes of such certified shorthand~~
28 ~~reporters shall be preserved and filed in the office of the~~
29 ~~director.~~ Any transcript prepared as above provided and duly
30 certified shall be received as evidence by the director and by any
31 court with the same effect as if such reporter were present and
32 testified to the records so certified. The director or
33 administrative law judge may make the findings, awards, decisions,
34 rulings or modifications of findings or awards and do all acts at
35 any time without awaiting the transcription of the testimony of the
36 reporter if the director or administrative law judge deems it
37 expedient and advisable to do so.

evidence by the director board and by any court with the same effect as if such the certified shorthand reporter were present and testified to the records so certified.

(c) The director or administrative law judge, whoever is conducting the hearing, may make the findings, awards, decisions, rulings or modifications of findings or awards and do all acts at any time without awaiting the transcription of the testimony of the certified shorthand reporter if the director or administrative law judge deems it expedient and advisable to do so.

delete

Sec. 20. K.S.A. 44-553 is hereby amended to read as follows: 44-553. Each witness who appears before the director or administrative law judge in response to a subpoena shall receive the same fee and mileage as is provided for witnesses attending district courts in civil cases in this state; and, The director or the administrative law judge, whoever is conducting the hearing, shall tax and apportion the costs of such witness fees in his the discretion of the director or the administrative law judge, as the case may be, and shall make such orders relative to the payment of such fees as he the director or the administrative law judge may deem expedient in order to secure and provide for the payment of the same witness fees.

Sec. 21. K.S.A. 44-554 is hereby amended to read as follows: 44-554. The director or the administrative law judge, whoever is conducting the hearing or other proceeding, or any party affected by the hearing or proceedings may cause the depositions of witnesses residing within or without the state to be taken in the manner prescribed by law for like depositions in civil actions in district courts in this state.

The Board members

Sec. 22. K.S.A. 1991 Supp. 44-555 is hereby amended to read as follows: 44-555. The secretary--of--human-resources--or--the secretary's-designee director or the administrative law judge, whoever is conducting the hearing or other proceeding is hereby authorized to assess all or a part of the certified shorthand reporter's fees to any party to the proceedings for compensation

board members

44-556. Judicial review; procedure; venue; medical and other compensation pending review; reimbursement or credit for amounts paid under certain circumstances. (a) Any action of the director pursuant to the workers compensation act shall be subject to review in accordance with the act for judicial review and civil enforcement of agency actions. Such review shall be upon questions of law and fact as presented and shown by a transcript of the evidence and proceedings as presented, had and introduced before the director. The venue of the action shall be the county where the cause of action arose or the county mutually agreed upon by all of the parties. Any such action shall have precedence over all other hearings except

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those of like character, and shall be heard not later than the first term of the district court after the appeal has been perfected, and the court shall decide all such cases within 60 days after submission. The appealing party shall notify the director when judgment is issued by the court. If judgment is not issued within 60 days of submission, any party may notify the director to that effect. The director will advise the judge to whom the case was submitted that 60 days has elapsed since submission of the case and request that a decision be rendered. If no decision is forthcoming within 30 days of such request by the director, the director will advise the supreme court justice having jurisdiction over such judge of all of the facts in regard to the review and the failure of the judge to render a decision as required by this section.

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

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

(d) (1) If compensation, including medical benefits, temporary total disability benefits or vocational rehabilitation benefits, has been paid to the worker by the employer or the employer's insurance carrier during the pendency of review by the district court or by appellate courts and the amount of compensation awarded by the

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

(2) If any temporary or permanent partial disability or temporary or permanent total disability benefits have been paid to the worker by the employer or the employer's insurance carrier during the pendency of review by the district court or by appellate courts and the amount of compensation awarded for such benefits by the ~~director~~ ^{board} or the district court is reduced by the decision on the appeal or review and the balance of compensation due the worker exceeds the amount of such reduction, the employer and the employer's insurance carrier shall receive a credit which shall be applied as provided in this subsection (d)(2) for all amounts of such benefits which are in excess of the amount of such benefits that the worker is entitled to as determined by the final decision on review or appeal. If a lump-sum amount of compensation is due and owing as a result of the decision of the district court, the credit under this subsection (d)(2) shall be applied first against such lump-sum amount. If there is no such lump-sum amount or if there is any remaining credit after a credit has been applied to a lump-sum amount due and owing, such credit shall be applied against the last compensation payments which are payable for a period of time after the final decision on review or appeal so that the worker continues to receive compensation payments after such final decision until no further compensation is payable after the credit has been satisfied. The credit allowed under this subsection (d)(2) shall not be applied so as to stop or reduce benefit payments after such final decision, but shall be used to reduce the period of time over which benefit payments are payable after such final decision. The provisions of this subsection (d)(2) shall be applicable in all cases under the workers compensation act in which a final award is issued by an administrative law judge on or after July 1, 1990.

(e) If compensation, including medical benefits, temporary total disability benefits or vocational rehabilitation benefits, has been paid to the worker by the employer, the employer's insurance carrier or the workers compensation fund during the pendency of review by the district court or by appellate courts, and the employer, the

employer's insurance carrier or the workers compensation fund, which was held liable for and ordered to pay all or part of the amount of compensation awarded by the ~~director~~ or the district court, is held not liable by the final decision on the appeal or review for the compensation paid or is held liable on such appeal or review to pay an amount of compensation which is less than the amount paid pursuant to the award, then the employer, employer's insurance carrier or workers compensation fund shall be reimbursed by the party or parties which were held liable on such appeal or review to pay the amount of compensation to the worker that was erroneously ordered paid by the ~~director~~ or district court. The director shall determine the amount of compensation which is to be reimbursed to each party under this subsection, if any, in accordance with the final decision on the appeal or review and shall certify each such amount to be reimbursed to the party required to pay the amount or amounts of such reimbursement. Upon receipt of such certification, the party required to make the reimbursement shall pay the amount or amounts required to be paid in accordance with such certification. No worker shall be required to make reimbursement under this subsection or subsection (d).

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

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

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(h) It is the intention of the legislature that with the creation of the workers' compensation board, and after the board has operated for a sufficient period of time, *de novo* review by the district courts shall be reviewed to determine necessity of the same.

and shall note the amounts assessed on the findings, award or order.

Sec. 23. K.S.A. 1991 Supp. 44-556 is hereby amended to read as follows: 44-556. (a) Any action of the director board pursuant to the workers compensation act shall be subject to review in accordance with the act for judicial review and civil enforcement of agency actions by appeal directly to the court of appeals. Any party may appeal from a final order of the board by filing an appeal with the court of appeals within 30 days of the date of the final order. Such review shall be only upon questions of law ~~and-fact-as-presented-and-shown-by-a-transcript-of--the--evidence and--proceedings--as--presented,--had--and--introduced-before-the~~ director. The venue of the action shall be the county where the cause of action arose or the county mutually agreed upon by all of the parties. Any such action shall have precedence over all other hearings except those of like character, and shall be heard not later than the first term of the district court of appeals after the appeal has been perfected, and the court of appeals shall decide all such cases within 60 days after submission. The appealing party shall notify the director when judgment is issued by the court. If judgment is not issued within 60 days of submission, any party may notify the director to that effect. The director will advise the chief judge ~~to--whom--the--case--was submitted of the court of appeals~~ that 60 days has elapsed since submission of the case and request that a decision be rendered. If no decision is forthcoming within 30 days of such request by the director, the director will advise the chief justice of the supreme court ~~justice-having-jurisdiction-over-such-judge~~ of all of the facts in regard to the review and the failure of the court of appeals to render a decision as required by this section.

(b) On any such review the district court of appeals shall have jurisdiction to grant or refuse compensation, or to increase or diminish any award of the director compensation as justice may require. No compensation shall be due or payable until the

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expiration of the time for commencing an action for review and then the payment of past due compensation awarded by the director board shall not be payable if, within such time, a petition for review has been filed in accordance with the act for judicial review and civil enforcement of agency actions. Except as otherwise provided by this section, the right of review shall include the right to make no payments of such compensation until the review has been decided by the district court of appeals if the employer is insured for workers compensation liability with an insurance company authorized to do business in this state, if the employer is maintaining membership in a qualified group-funded workers compensation pool under K.S.A. 44-581 through 44-591 and amendments thereto, if the employer is maintaining membership in a group-funded pool under the Kansas municipal group-funded pool act which includes workers compensation and employers' liability under the workers compensation act, or if the employer is currently approved by the director as a self-insurer and has filed a bond with the court of appeals as required for the district court in accordance with K.S.A. 44-530 and amendments thereto. Commencement of an action for review shall not stay the payment of compensation due for the ten-week period next preceding the director's board's decision and for the period of time after the director's board's decision and prior to the decision of the district court of appeals on review.

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

(d) (1) If compensation, including medical benefits, temporary total disability benefits or vocational rehabilitation benefits, has been paid to the worker by the employer or the

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employer's insurance carrier during the pendency of review by ~~the district court or by appellate courts~~ under this section and the amount of compensation awarded by the ~~director or the district court board~~ is reduced or totally disallowed by the decision on the appeal or review, the employer and the employer's insurance carrier, except as otherwise provided in this section, shall be reimbursed from the workers compensation fund established in K.S.A. 44-566a and amendments thereto for all amounts of compensation so paid which are in excess of the amount of compensation that the worker is entitled to as determined by the final decision on review. The director shall determine the amount of compensation paid by the employer or insurance carrier which is to be reimbursed under this subsection (d)(1), and the director shall certify to the commissioner of insurance the amount so determined. Upon receipt of such certification, the commissioner of insurance shall cause payment to be made to the employer or the employer's insurance carrier in accordance therewith.

(2) If any temporary or permanent partial disability or temporary or permanent total disability benefits have been paid to the worker by the employer or the employer's insurance carrier during the pendency of review by ~~the district court or by appellate courts~~ under this section and the amount of compensation awarded for such benefits by the ~~director or the district court board~~ is reduced by the decision on the appeal or review and the balance of compensation due the worker exceeds the amount of such reduction, the employer and the employer's insurance carrier shall receive a credit which shall be applied as provided in this subsection (d)(2) for all amounts of such benefits which are in excess of the amount of such benefits that the worker is entitled to as determined by the final decision on review or appeal. If a lump-sum amount of compensation is due and owing as a result of the decision of the ~~district court of appeals~~, the credit under this subsection (d)(2) shall be applied first against such lump-sum amount. If there is no such lump-sum

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amount or if there is any remaining credit after a credit has been applied to a lump-sum amount due and owing, such credit shall be applied against the last compensation payments which are payable for a period of time after the final decision on review or appeal so that the worker continues to receive compensation payments after such final decision until no further compensation is payable after the credit has been satisfied. The credit allowed under this subsection (d)(2) shall not be applied so as to stop or reduce benefit payments after such final decision, but shall be used to reduce the period of time over which benefit payments are payable after such final decision. The provisions of this subsection (d)(2) shall be applicable in all cases under the workers compensation act in which a final award is issued by an administrative law judge on or after July 1, 1990.

(e) If compensation, including medical benefits, temporary total disability benefits or vocational rehabilitation benefits, has been paid to the worker by the employer, the employer's insurance carrier or the workers compensation fund during the pendency of review ~~by the district court or by appellate courts~~ under this section, and the employer, the employer's insurance carrier or the workers compensation fund, which was held liable for and ordered to pay all or part of the amount of compensation awarded by the ~~director or the district court~~ board, is held not liable by the final decision on the appeal or review for the compensation paid or is held liable on such appeal or review to pay an amount of compensation which is less than the amount paid pursuant to the award, then the employer, employer's insurance carrier or workers compensation fund shall be reimbursed by the party or parties which were held liable on such appeal or review to pay the amount of compensation to the worker that was erroneously ordered paid by the director or district court. The director shall determine the amount of compensation which is to be reimbursed to each party under this subsection, if any, in accordance with the final decision on the appeal or review and shall certify each such amount to be reimbursed to the party

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required to pay the amount or amounts of such reimbursement. Upon receipt of such certification, the party required to make the reimbursement shall pay the amount or amounts required to be paid in accordance with such certification. No worker shall be required to make reimbursement under this subsection or subsection (d).

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

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

Sec. 24. K.S.A. 44-557 is hereby amended to read as follows: 44-557. (a) It is hereby made the duty of every employer to make or cause to be made a report to the director of any accident, or claimed or alleged accident, to any employee which occurs in the course of the employee's employment and of which the employer or the employer's foreman supervisor has knowledge, which report shall be made upon a form to be prepared by the director, within ~~twenty-eight--(28)~~ 28 days, after the receipt of such knowledge, if the personal injuries which are sustained by such accidents, are sufficient wholly or partially to incapacitate the person injured from labor or service for more than the remainder of the day, shift or turn on which such injuries were sustained.

(b) When such accident has been reported and subsequently such person has died, a supplemental report shall be filed with the director within ~~twenty-eight--(28)~~ 28 days after receipt of