

## MINUTES OF THE HOUSE COMMITTEE ON BUSINESS, COMMERCE AND LABOR.

The meeting was called to order by Chairperson Al Lane at 9:05 a.m. on January 20, 1999 in Room 521-S of the Capitol.

All members were present except: Rep. Broderick Henderson - excused  
Rep. John Toplikar - excused

Committee staff present: Bob Nugent, Revisor of Statutes  
Jerry Donaldson, Legislative Research Department  
Dennis Hodgins, Legislative Research Department  
Bev Adams, Committee Secretary

Conferees appearing before the committee: Melissa Wangeman, Legal Counsel, Secretary of State  
Phil Harness, Director of Workers Compensation, KDHR  
David Shufelt, Assistant Director of Workers Compensation,  
KDHR

Others attending: See attached list

At the end of the meeting a motion was made by Rep. Grant to approve the minutes of January 13 and 14 as written. The motion was seconded by Rep. Swenson. The minutes were approved.

## Introduction of Bills:

Melissa Wangeman, Legal Counsel, Secretary of State's Office, appeared before the committee to request the introduction of a bill concerning corporation clean-up legislation. The legislation were add consistency to their office and filing and make their office more customer friendly. (See Attachment 1)

Rep. Ruff made a motion to introduce the bill as requested. The motion was seconded by Rep. Grant. The motion passed.

Chairman Lane explained the handouts furnished by the Division of Employment Security, KDHR. Handouts include: Handbook for Employers, a guide to the Kansas Employment Security Law; a pamphlet about Unemployment Insurance Benefits; and two graphs showing the maximum and minimum weekly amounts paid in unemployment benefits comparing the amounts paid by other states. (See Attachment 2) The book is available from the Kansas Department of Human Resources, Division of Employment Security, 401 SW Topeka Boulevard, Topeka, Kansas 66603-3182.

Phil Harness, Director of the Division on Workers Compensation, KDHR, appeared before the meeting to give a presentation on Workers Compensation. He included in his handouts: an organizational chart of his division; a book, Workers Compensation Information for Kansas Employers & Employees; a list of the members of the Workers Compensation Advisory Council (WCAC); testimony containing the recommendations for legislative changes approved by the council; the Kansas Workers Compensation Law & Regulations, and copies of **HB 2591**, **HB 2799**, and **HB 2831** (passed by the 1998 Legislature). (See Attachment 3) The books on Kansas Workers Compensation Law & Regulations and the Workers Compensation Information for Kansas Employers & Employees are available from the Division of Workers Compensation, 800 SW Jackson, Topeka, Kansas 66612-1227.

Mr. Harness gave a quick review of the history of Workers Compensation Insurance. He continued by going over the organizational chart to show how the Division on Workers Compensation is set up. He then introduced David Shufelt, Assistant Director of Workers Compensation, KDHR.

Mr. Shufelt went into more detail on what workers compensation is, who is covered, the difference types of insurance coverage, and how the system works. Of more than 100,000 workers compensation injury reports filed annually, the vast majority are settled by the insurance companies and the worker is treated and back on

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON BUSINESS, COMMERCE & LABOR, Room 521-S Statehouse, at 9:05 a.m. on January 20, 1999.

the job. Only about 7,000 have a hearing application filed. He led the committee through the system for a workers comp claim for a hypothetical injury to his back that he incurred when he bent to pick up a box while helping the Director distribute testimony to our committee meeting. He concluded his testimony by answering many questions from the committee.

Mr. Harness then gave a report on the WCAC and its recommendations for legislative changes. The council will meet again on January 25 and will probably have more recommendations.

Chairman Lane adjourned the meeting at 10:10 a.m.

The next meeting is scheduled for January 21, 1999.

# HOUSE BUSINESS, COMMERCE & LABOR COMMITTEE GUEST LIST

DATE January 20, 1999

NAME	REPRESENTING
Rich Pittman	Health/Midwest
David Shufelt	Dept. Human Resources - Wak. Comp.
Melissa Wanyemana	Sec. of State
Fariba Faurcayan	Sec. of State
Pat Morris	K.A.I.A.
Begay Lane	—
RANDY TONGIOR	POST AUDIT
Paul Davis	Kansas Insurance Department
Christa Lee Jirick	K177HA
Pat Brain	m.i.-m. temporary
Harry Born	Dept. of Admin.
Stacy Saldan	Heim & Xerox Hotel
Wayne Maucher	K. AFL-CIO
Terry Leatherman	KCCI
DICK CARTER JR	Ks. Self-Insurers Assn.
Stephen Duvall	KDHR
Carl Hill	Ks Motor Carriers Assn.
Jim W. Hoff	Ks AFL-CIO
Gene M. Stahl	KTLA

**SECRETARY OF STATE  
1999 CORPORATE LEGISLATION**

1. Delete requirement that corporations include the county in the registered office address.

Reason: Corporate documents are no longer required to be recorded at the county level and therefore the information is unnecessary. Failure to include the county in the address results in rejection of corporate documents and filing delays.

2. Delete requirement that the Secretary of State return copies of foreign corporation filings (i.e. out-of-state) to the resident agent.

Reason: Corporate documents are no longer required to be recorded in the county of the resident agent and therefore the reason for this provision has ceased. The party filing the documents would prefer to receive copies back directly.

3. Discontinue issuance of certificates of authority and certificates of withdrawal to foreign corporations and issue certified copies.

Reason: The Secretary of State does not issue "certificates" for any other filing, it issues certified copies. This change would create consistency in all filings.

4. Amend business trust laws to eliminate requirement that balance sheet be certified by a CPA on the application and annual report and allow the trustee to verify the accuracy of the balance sheet.

Reason: Requiring a CPA to certify the financial information is burdensome and expensive for the business trust.

5. Simplify fax filing for business entities by accepting fax filings as originals and not requiring an original document within seven days of the fax filing.

Reason: 1. Failure of customers to file the original document within seven days results in rejected and delayed filings, 2. Modern trend among courts and other filing offices is to accept faxed filings, 3. Uniformity with the Revised LLC Act proposed by the KBA, which does not require an original document.

6. Allow faxed signatures, conformed signatures and electronically transmitted signatures for all business filings.

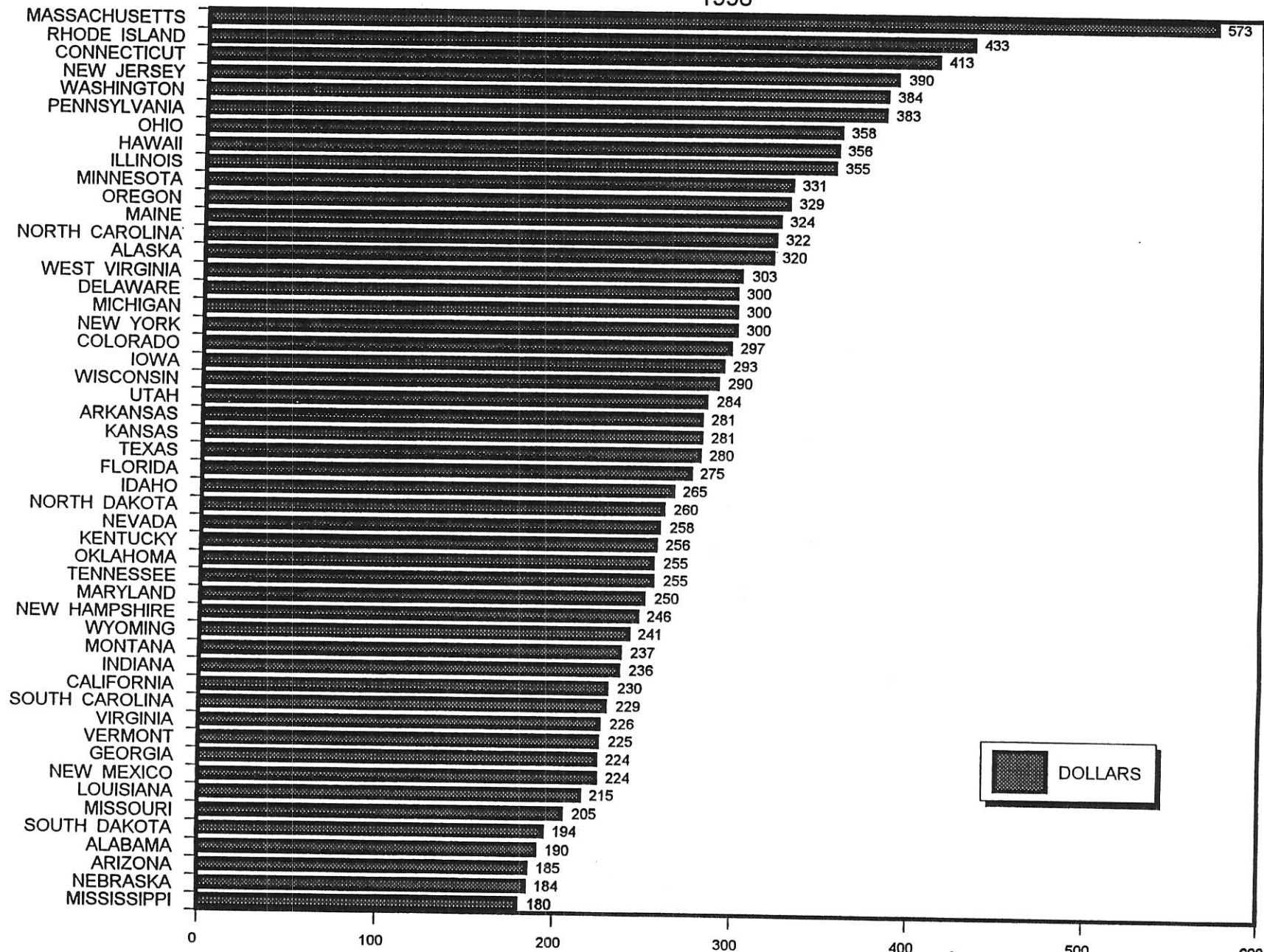
Reason: Uniformity with the Revised LLC Act proposed by the KBA, which does not require an original document. The Revised Act adopts the Delaware model, allowing for more modern methods of signing documents.

*House Business, Commerce & Labor  
1-20-99  
Attachment 1*



# MAXIMUM WEEKLY BENEFIT AMOUNT

1998



DOLLARS

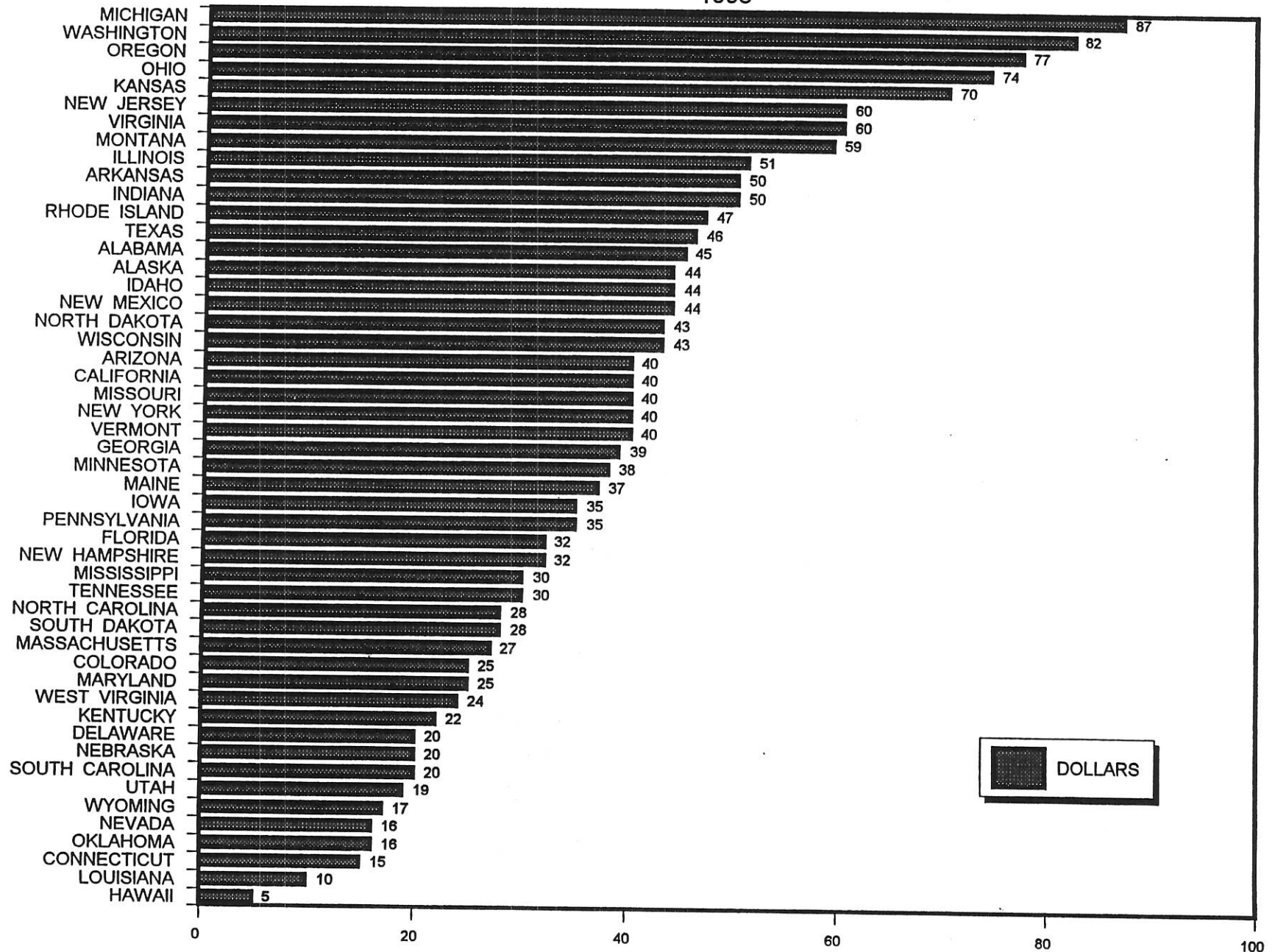
House Business, Commerce & Labor  
 1-20-99  
 Attachment 2

House Business, Commerce & Labor  
 1/20/99  
 Attachment 2

# MINIMUM WEEKLY BENEFIT AMOUNT

1998

2-2



DOLLARS

2-2

## 14. CAN I FILE A CLAIM AGAINST ANOTHER STATE?

You may file a claim against any state of the United States, the District of Columbia, Puerto Rico, the Virgin Islands and Canada.

If you have wages in two or more states, you may request the wages be combined by transfer to the state in which you file your claim. If you want more information concerning a combined wage claim, contact a claims representative.

## 15. APPROVED TRAINING

You may be enrolled in vocational or technical training or basic education skills and receive unemployment insurance benefits provided that the training is approved. For additional information or to make application for approved training under the Kansas Employment Security Law, contact a claims representative.

## 16. WORKER PROFILING AND REEMPLOYMENT SERVICES

You may be selected for worker profiling and reemployment assistance which is designed to assist unemployment insurance claimants make a successful transition to new employment. Failure to participate or to show justifiable cause for failure to participate may result in a denial of benefits.

## 17. DIRECT DEPOSIT

Ask a claims representative about depositing your unemployment check directly to any banking institution of your choice through electronic funds transfer (EFT).

## 18. UNEMPLOYMENT INSURANCE BENEFIT PAYMENTS REPORTABLE AS INCOME

Benefits are subject to income tax depending upon your tax filing status. The Internal Revenue Service can furnish complete information on how to report and compute the tax. The Department of Human Resources mails a statement, form 1099-UC, in January each year identifying the amount of benefits that were paid to you.

You may elect to have federal income taxes withheld from unemployment insurance benefits. Ask a claims representative for more information.

## 19. RELEASE OF INFORMATION

Information in an unemployment insurance claim file is confidential and cannot be released without positive identification. Information from a claim file can be released to federal and state officials in the performance of their official duties for the purpose of income and eligibility verification. All

public officials must hold the files or information confidential.

## 20. EQUAL OPPORTUNITY

The unemployment insurance program is prohibited from discrimination on the grounds of race, color, religion, sex, national origin, age, disability, political affiliation or belief. Auxiliary aids and services are available upon request to individuals with disabilities.

If you believe that you have been subjected to discrimination, you may file a complaint within 180 days from the date of the alleged violation with the agency's equal opportunity officer.

### IMPORTANT POINTS TO REMEMBER!

.... Do not accept hearsay information about unemployment insurance. If you are unemployed, call the unemployment insurance office and file a claim.

.... When you have questions or need additional clarification about unemployment insurance, call a claims representative for assistance.

.... You do not need to employ anyone to assist you in securing your rights to unemployment insurance. A claims representative will accept your claim and provide any information and assistance as needed.

.... If you work, you must report all earnings including any vacation or holiday pay for any week that you file a claim. This would include any reserve pay received as a Reservist for weekend drill and annual training participation. All earnings from employment are reportable when earned. You may earn 25% of your determined weekly benefit amount before your benefits are reduced for earnings from employment. (Be sure to report the total gross amount.)

.... You must be careful to avoid making false statements when filing a claim. Do not accept unemployment insurance payments obtained by misrepresentation. Do not certify that you were unemployed or available for work for a week if you were working. The Law provides severe penalties for this offense.

.... If you return to steady work, then your claim becomes inactive. If you again become unemployed, you must report to a claims representative in order to reopen your claim. The mailing of a weekly claim form does not reopen your claim.

.... If you plan to be away from your home area and intend to continue filing weekly claims, contact a claims representative for filing instructions. If you move to another state, contact the nearest unemployment insurance office and assistance will be provided when filing a claim. Take with you all claim documents that have been mailed to you.

### KANSAS CITY CALL CENTER

PO Box 2098  
Kansas City, Kansas 66110-0098  
Office Phone ..... (913) 596-3500  
To File Weekly Claims & For Inquiry ..... (913) 342-4806

**Counties Served:** Allen, Anderson, Atchison, Bourbon, Brown, Cherokee, Crawford, Doniphan, Franklin, Jefferson, Johnson, Labette, Leavenworth, Linn, Miami, Neosho, Wyandotte. Missouri counties served: Cass, Clay, Jackson, Platte

### TOPEKA CALL CENTER

PO Box 3539  
Topeka, Kansas 66601-3539  
Office Phone ..... (785) 575-1460  
To File Weekly Claims & For Inquiry ..... (785) 296-4337

**Counties Served:** Barton, Chase, Chautauqua, Clay, Cloud, Coffey, Dickinson, Douglas, Elk, Ellis, Ellsworth, Geary, Greenwood, Jackson, Jewell, Lincoln, Lyon, Marion, Marshall, McPherson, Mitchell, Montgomery, Morris, Nemaha, Osage, Osborne, Ottawa, Phillips, Pottawatomie, Republic, Rice, Riley, Rooks, Rush, Russell, Saline, Shawnee, Smith, Wabaunsee, Washington, Wilson, Woodson

### WICHITA CALL CENTER

PO Box 877  
Wichita, Kansas 67201-0877  
Office Phone ..... (316) 383-9947  
Vietnamese Language Line ..... (316) 264-8509  
To File Weekly Claims & For Inquiry ..... (316) 266-8639  
or ..... (316) 266-8690

**Counties Served:** Barber, Butler, Cheyenne, Clark, Comanche, Cowley, Decatur, Edwards, Finney, Ford, Gove, Graham, Grant, Gray, Greeley, Hamilton, Harper, Harvey, Haskell, Hodgeman, Kearny, Kingman, Kiowa, Lane, Logan, Meade, Morton, Ness, Norton, Pawnee, Pratt, Rawlins, Reno, Scott, Sedgwick, Seward, Sheridan, Sherman, Stafford, Stanton, Stevens, Sumner, Thomas, Trego, Wallace, Wichita

### HUTCHINSON

To File Weekly Claims & For Inquiry ..... (316) 664-5949

### OVERLAND PARK

To File Weekly Claims & For Inquiry ..... (913) 342-4878

### PITTSBURG

To File Weekly Claims & For Inquiry ..... (316) 232-9487

### SALINA

To File Weekly Claims & For Inquiry ..... (785) 826-1662

### INTERSTATE (for Claimants Living Outside Kansas)

To File Weekly Claims & For Inquiry ..... (785) 368-6534

Use 1-800-292-6333 if you are calling long distance. However, this toll free number cannot accept your weekly claim. Please refer to the above telephone numbers.

# Unemployment Insurance Benefits

Esto Panfleto es disponible en Español tambien  
Có ban dich sang Viet ngu neu ban can

## 1. WHAT IS UNEMPLOYMENT INSURANCE?

This insurance is also known as unemployment compensation. It insures your wages in order that you may have an income on a reduced basis when temporarily without a job.

In Kansas, the worker does not pay unemployment insurance coverage. The employer pays all of the cost in the form of a payroll tax. Unemployment insurance is not a part of Social Security nor is it a welfare program.

## 2. CAN ANYONE MAKE APPLICATION FOR BENEFITS?

Yes. However, to have your application allowed, you must have sufficient wages from insured employment. This means working for an employer who is required to pay the taxes on your wages into the unemployment trust fund. This may also include military service of the armed forces of the United States and civilian employment with an agency of the federal government.

## 3. HOW DO I QUALIFY FOR BENEFITS?

You must have received wages from insured employment in at least two quarters of your base period, and those wages must equal 30 times your weekly benefit amount (see Item No. 6).

## 4. WHAT IS THE BASE PERIOD?

The base period is 12 months in duration. Wages from insured employment paid to you during this 12 month period are used to determine your weekly and total benefit amounts. Base periods are as follows:

	The base period is the
<u>If your claim is effective in:</u>	<u>12 months ending last:</u>
January, February, March .....	September 30
April, May, June .....	December 31
July, August, September .....	March 31
October, November, December .....	June 30

**NOTE: Wages are assigned to a quarter as they are paid; not when they are earned.**

2-3

2/3



## 5. WHAT IS THE BENEFIT YEAR?

This is the one year period in which you may claim benefits. The benefit year usually begins on the Sunday preceding the filing date of your application. If you live in an area normally serviced by this agency on a monthly basis, then back dating may be allowed under certain conditions.

## 6. WHAT IS THE WEEKLY BENEFIT AMOUNT?

This is the amount you may receive for a week of total unemployment. This amount is determined by multiplying your highest quarter wages by 4.25 percent. If this figure is higher than the current maximum weekly benefit amount, then the maximum weekly benefit amount becomes your weekly benefit amount. If the figure is less than the current minimum weekly benefit amount, then the minimum weekly benefit amount becomes your weekly benefit amount. The maximum and minimum weekly benefit amounts are established each year by the Secretary of Human Resources in accordance with the Kansas Employment Security Law. Your unemployment insurance determination states the current amounts.

## 7. WHAT IS THE TOTAL BENEFIT AMOUNT?

The total benefit amount is the dollar amount you may receive during your benefit year. This is determined by:

- (1) Multiplying your weekly benefit amount times 26; and
- (2) Divide the total of your base period wages by three.

Compare these two answers. Your total benefit amount is the lesser of these two answers.

## 8. HOW SOON WILL I KNOW IF I CAN DRAW BENEFITS?

A determination is usually mailed within four working days. This determination identifies the dollar amounts that can be paid to you. If there are errors or incomplete entries on the new claim form, then additional time may be required. Usually, your first check is mailed in the third week after the new claim is filed, if eligible and not disqualified.

## 9. WHAT IS A WAITING PERIOD AND HOW DO I GET WAITING PERIOD CREDIT?

A waiting period week is usually the first week claimed after filing a new claim. The Law requires that you must serve and claim this week. You may be allowed waiting period credit by meeting the usual eligibility requirements. A waiting period week may be allowed during some of the disqualifications. The waiting period week is a nonpayable week.

## 10. WHEN MAY I BE ELIGIBLE FOR UNEMPLOYMENT INSURANCE BENEFITS?

You may be eligible for benefits if:

- a. You register for work with the Employment and Training Center.
- b. You serve and claim a one week waiting period.
- c. You are unemployed. This means having no work at all; or working less than a full week and have gross wages of less than your weekly benefit amount.
- d. You are able to work. This means being able to perform your usual occupation or other work for which you are reasonably fitted by experience or training.
- e. You are available for work. To be available, you must show that you desire a job and demonstrate this by seeking work.

## 11. WHAT IS A DISQUALIFICATION AND WHEN WOULD THIS APPLY TO ME?

Even though you meet the other requirements, you may be disqualified from receiving benefits under certain provisions of the Law. A disqualification suspends or denies payments when you are: unemployed because of your own act; claiming or receiving benefit payments under an unemployment insurance law of another state law or federal law; or when fraudulent claims are filed. Disqualifications are explained as follows:

- a. You are disqualified beginning with the day after the separation until you become reemployed and have insured earnings of at least three times your determined weekly benefit amount if you:

- (1) Voluntarily leave work without good cause attributable to the work or the employer.

There are 11 specific exceptions whereby benefits can be payable. Ask a claims representative for further information.

- (2) Were discharged for misconduct connected with the work.

There are some specific circumstances that are not disqualifying. Ask a claims representative for further information.

- (3) Failed without good cause to apply for or to accept suitable work when offered by the employment office or an employer.

- (4) Failed, after a temporary job assignment, to affirmatively request an additional assignment on the next

succeeding workday, if required by the employment agreement, after completion of a given work assignment.

- b. You are disqualified if you were discharged for gross misconduct connected with the work until you are reemployed and have insured earnings of at least eight times your determined weekly benefit amount. In addition, all wage credits earned from the employer who discharged you for gross misconduct are cancelled.

- c. You can be disqualified for a period of one year for making false statements or for withholding information to obtain more benefits than due.

- d. Indefinite disqualifications -- You are denied benefits for each week in which:

- (1) You are unemployed because of a labor dispute in which you are interested, participating or financing.

- (2) You are claiming or receiving unemployment insurance benefits under another state or federal law.

- (3) You are receiving compensation for temporary or permanent total disability under the Workers' Compensation Law of a state or the United States.

- (4) You receive a backpay award or settlement.

- e. Other disqualifications:

- (1) Employees of Educational Institutions -- Many employees of educational institutions are disqualified from benefits between terms if they had a contract or reasonable assurance for their work in a recently completed academic year or term and have a contract or reasonable assurance of employment with an educational institution in the same or similar position for the next academic year or term.

- (2) School bus or other motor vehicle drivers, employed by a private contractor to transport pupils, students and school personnel to or from school-related functions or activities for an educational institution, are disqualified for benefits between academic years or terms if they have a contract or reasonable assurance of employment with a private contractor for the next academic year.

- (3) Employees of governmental entities and certain nonprofit organizations, that provide services to or on behalf of an educational institution, are disqualified for benefits between academic years or terms if they have a contract or reasonable assurance of employment for the next academic year or term.

- (4) Professional Athletes -- Unemployment insurance benefits based on wage credits earned as a professional athlete are not available between seasons to individuals who have been employed in the past sports

season as a professional athlete and have a reasonable assurance of being again employed as a professional athlete in the following sports season.

- (5) Illegal Aliens -- Unemployment insurance benefits based upon wages earned while working in the United States illegally are not available when unemployed. Information concerning alien status is required.

- (6) Pensions, Retirement Pay, etc. -- Your weekly benefit amount is reduced by the amount contributed to by the employer if you are receiving a governmental or other pension, retirement or retired pay, annuity or other similar periodic payment under a plan maintained by a base period employer.

- (7) Students -- An individual who is registered at and attending an established school, training facility or other educational institution, or is on vacation during or between two successive years or terms is disqualified for benefits unless: concurrent with attending school the individual engaged in full-time employment; or is attending approved training, evening, weekend or limited daytime classes and is otherwise eligible.

## 12. WHAT IS AN INELIGIBILITY?

- a. You are not able to perform the duties of your customary occupation or the duties of other occupations for which you are reasonably fitted by training or experience.

- b. You are not available for work.

- c. You do not pursue a full course of action most reasonably calculated to result in reemployment.

## 13. WHAT APPEAL RIGHTS DO I HAVE?

If you are determined ineligible or are disqualified for benefits, or your benefits are reduced or denied for any reason, then you are mailed a notice in writing stating the reason for the determination. You may file an appeal to a referee within 16 days from the date a determination was mailed to you.

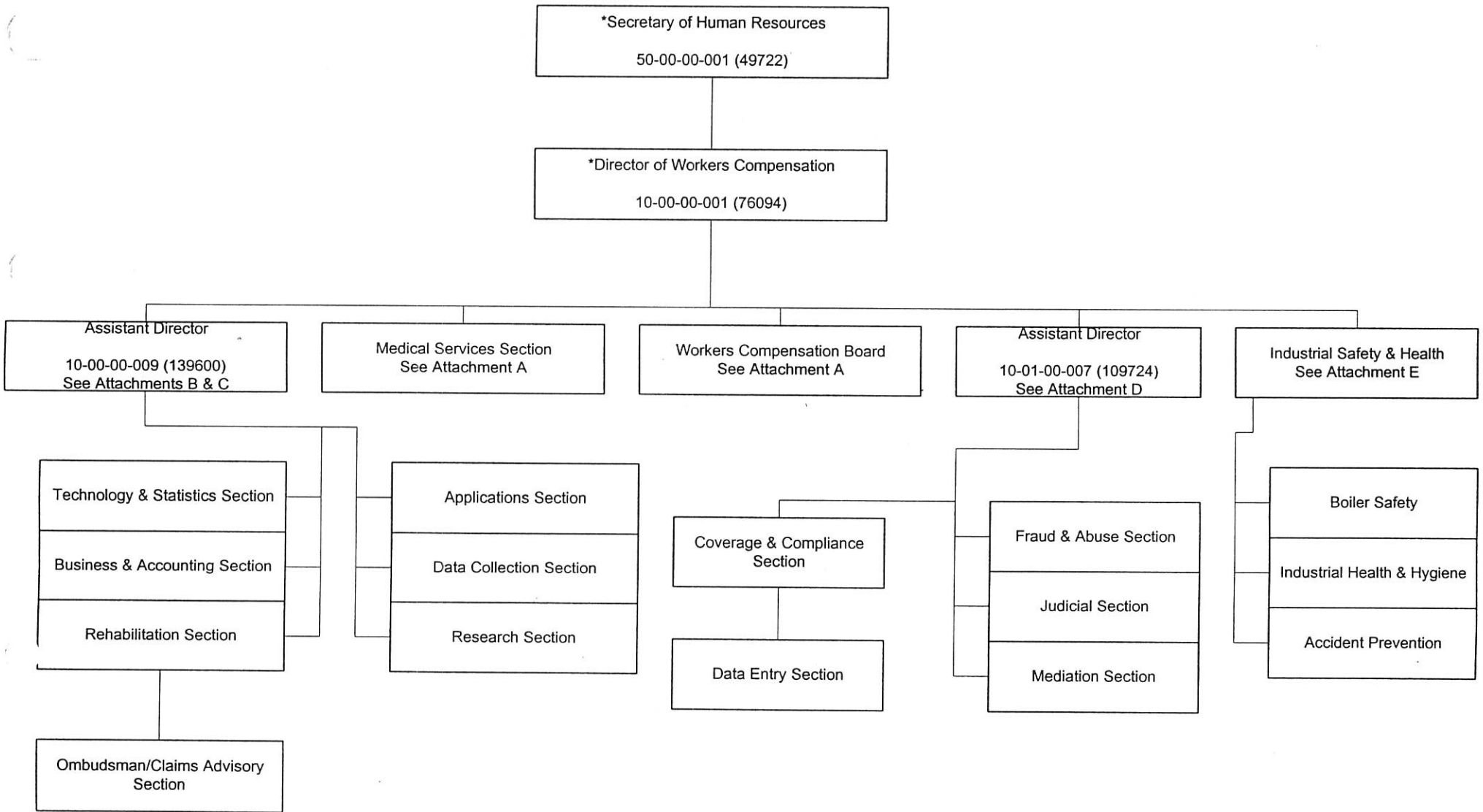
If you disagree with the decision of the referee, you may make further appeal to the Board of Review and then on to the courts. The appeal must be made within 16 days.

You may file an appeal in person or by mail by contacting any unemployment insurance or Job Service office of the State of Kansas or any other state. Your former employer is also an interested party to you and has the same appeal rights as you.

If you file an appeal and remain unemployed, continue to file weekly claims pending the results of the appeal.

Organizational Chart  
Kansas Department of Human Resources  
DIVISION OF WORKERS COMPENSATION

January, 1999

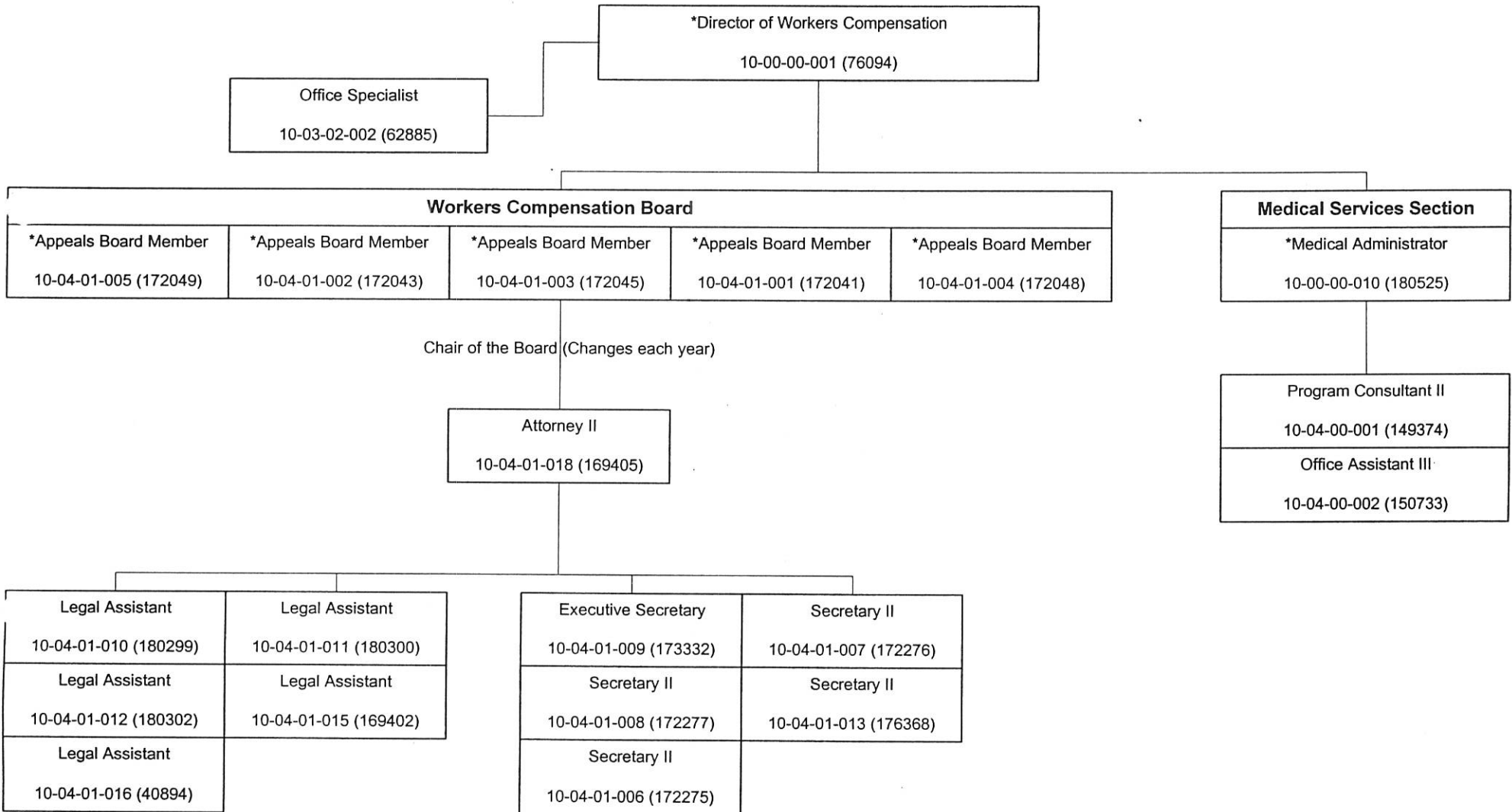



*House Business, Commerce & Labor  
1/20/99  
Attachment 3*

Approved by: \_\_\_\_\_

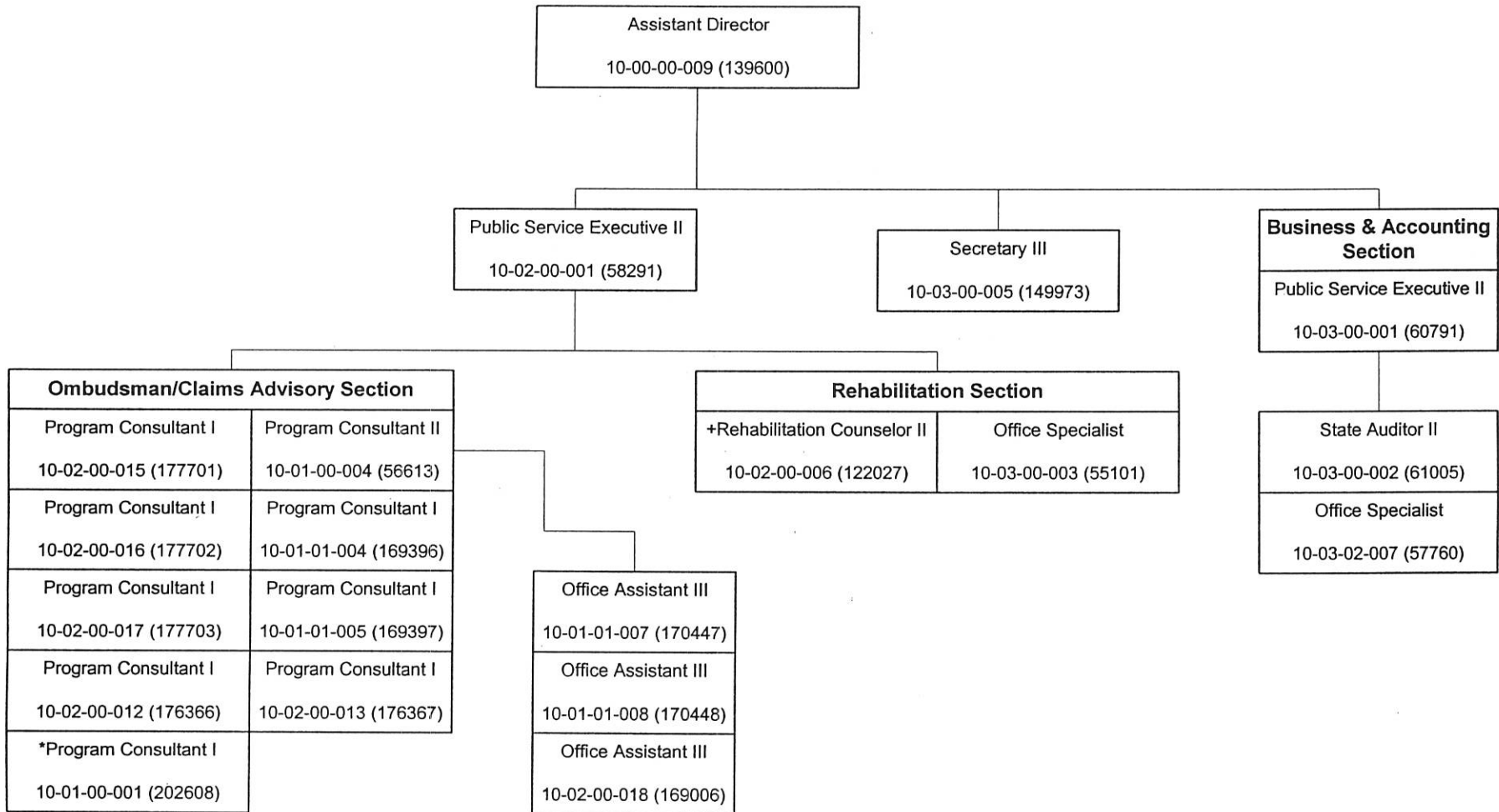
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Organizational Chart  
 Kansas Department of Human Resources  
 DIVISION OF WORKERS COMPENSATION



Approved by: 

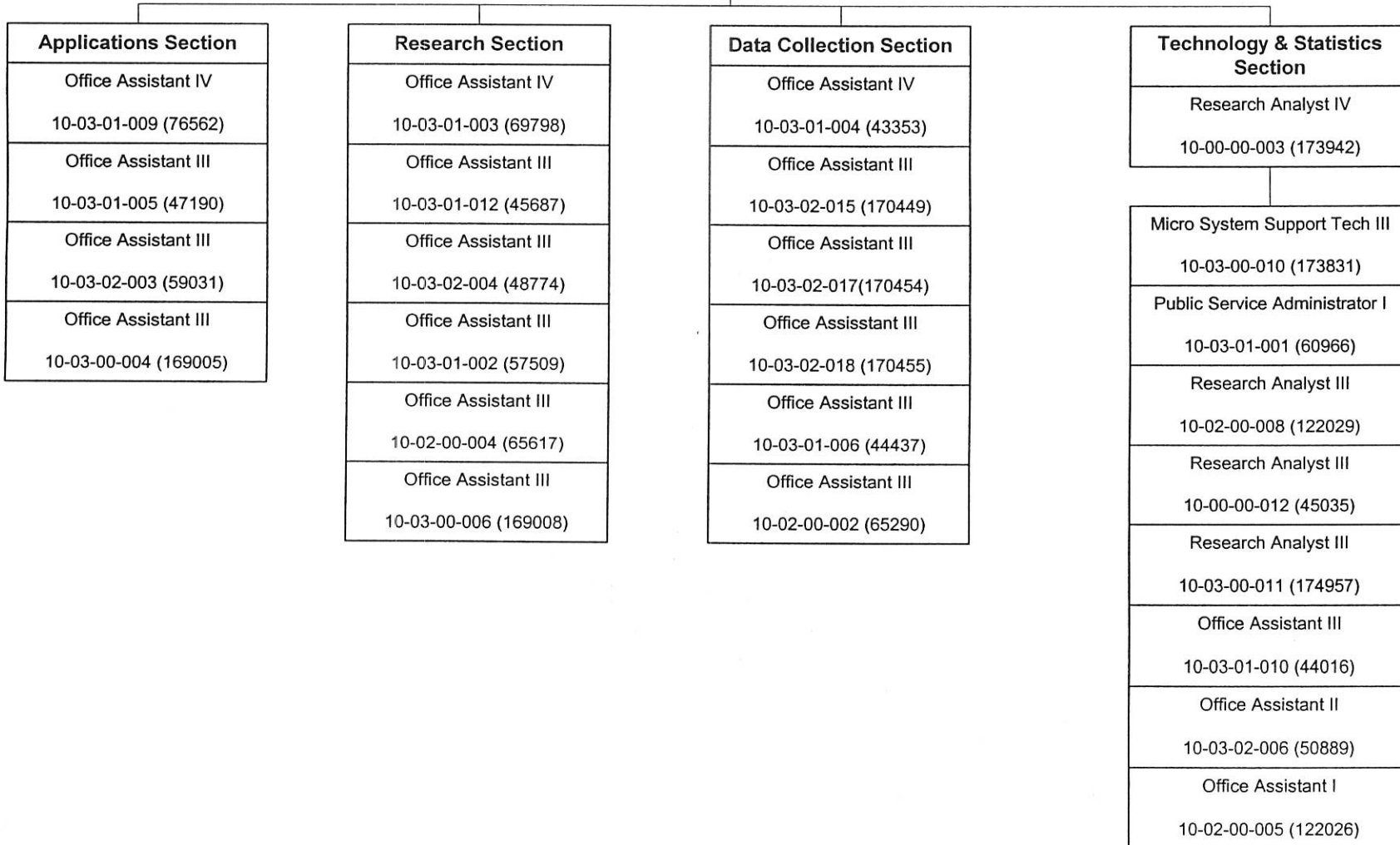


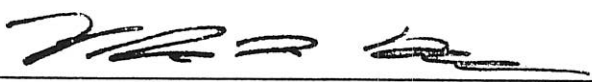


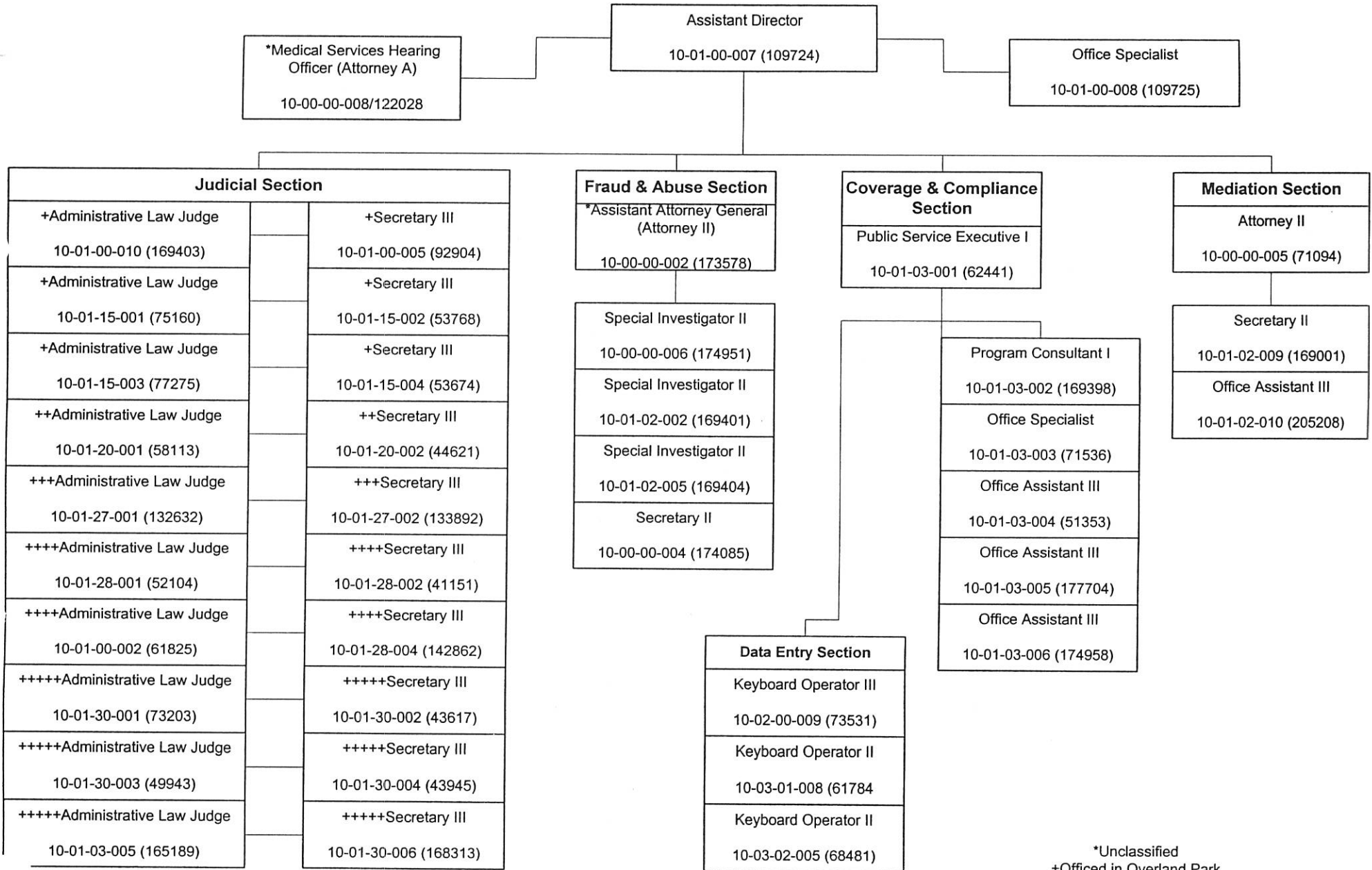
Approved by: 

Organizational Chart  
Kansas Department of Human Resources  
DIVISION OF WORKERS COMPENSATION

Assistant Director  
10-00-00-009 (139600)



Approved by: 



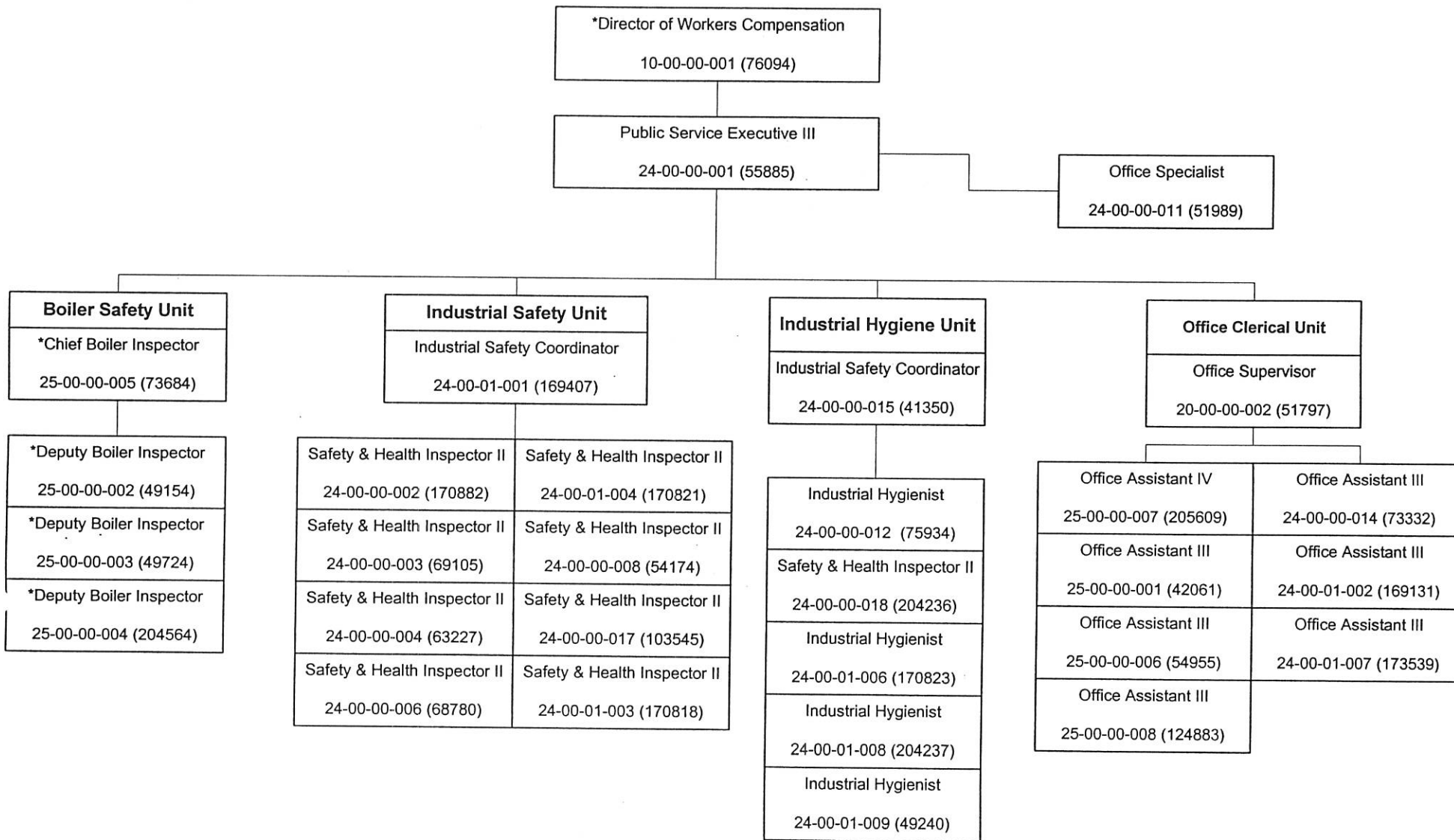
\*Unclassified  
 +Officed in Overland Park  
 ++Officed in Garden City  
 +++Officed in Salina  
 ++++Officed in Topeka  
 +++++Officed in Wichita

3-5

Approved by:

Organizational Chart  
 Kansas Department of Human Resources  
 DIVISION OF WORKERS COMPENSATION

January, 1999



proved by: 

\*Unclassified

# WORKERS COMPENSATION ADVISORY COUNCIL MEMBERS

(Revised 9-98)

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FAX 913-469-8182

**TESTIMONY BEFORE THE HOUSE BUSINESS, COMMERCE  
& LABOR COMMITTEE**

**BY PHILIP S. HARNESS  
JANUARY 20, 1999**

The Workers Compensation Advisory Council has met twice since the last legislative session (September 15, 1998 and January 8, 1999) and would propose the following legislative changes:

1. **Repeal of K.S.A. 44-501a:** The Kansas Supreme Court declared the statute unconstitutional in the *Osborne* case. The statute was an attempt to apply K.S.A. 44-501 retroactively, which attempt failed.
2. **Proposed amendment to K.S.A. 44-501 (d)(2)** to include certain drug levels under the conclusively presumption of employee impairment. Please note that this was a conceptual motion (which was passed unanimously); a draft will be forthcoming after the January 25, 1999, advisory council meeting.
3. **Proposed amendment K.S.A. 44-519** to allow that, except in the matters of preliminary hearings (under K.S.A. 44-534a), no report of a health care provider shall be otherwise admitted into evidence without foundation testimony. This has long been the practice in preliminary hearings by virtue of K.A.R. 51-3-5a, which has allowed medical reports without foundation testimony. A concern was raised as to whether the regulation conflicted with the statute; in order to alleviate that concern, there would be an exception made within the statute. (DRAFT ATTACHED.)
4. **Proposed amendment to K.S.A. 44-557 and 44-520a (written claim):** the Workers Compensation Act contains two (2) conditions precedent for an employee to meet prior to the ability to litigate a claim. The first one is a notice of the accident to the employer within ten (10) days (may be extended to 75 days for just cause); the second is an employee must make a written claim upon the employer for benefits within 200 days. Prior to 1993, the statute allowed an extension of the 200-day rule of up to one (1) year if the employer had failed to file an accident report. A revision in 1993 clouded that one-year extension language by stating that if an accident report was not filed by the employer (within 28 days), then a proceeding for compensation must be commenced by filing an **application** with the Director within one (1) year. An **application** has been considered to be the filing of a Form E-1 (application for regular hearing). The statute would seemingly say that instead of having the written claim requirement extended to one (1) year, a claimant must now file a Form E-1 within one (1) year. That would put the statute in direct conflict with K.S.A. 44-534 (the general workers compensation statute of limitations) which says one must file an **application** with the Director within two (2) years of the last payment of compensation or three (3) years from the date of accident.



Under a literal reading, if an employer does not do what is required by statute (timely file an accident report), the claimant is penalized by having to file the Form E-1 within one (1) year. The Workers Compensation Board has issued at least two (2) opinions in this area noting the mistake and indicating that surely this is not what the Legislature intended to do, and so held. The proposed amendment would insert the language back to its pre-1993 meaning and extend the 200-day rule to one year in the case of a failure by the employer to file an accident report. (There are further changes in K.S.A. 44-557 noted below.)

5. **Proposed amendments to K.S.A. 44-557 and K.S.A. 44-5,120:** there was a proposal to amend subsections (d) and (e) to prosecute the repeated failure of any employer to file an accident report (present language is the "knowing failure."). Further, the penalty against a workers compensation insurance carrier was stricken since the duty to file an accident report under subsection (a) is solely upon the employer.

Also, subsection (e) was amended so that the proceeding to recover the \$250 penalty is pursuant to the Kansas Administrative Procedures Act (KAPA) and not in the district court of Shawnee County.

There is a corollary amendment made to K.S.A. 44-5,120 (d)(20), the fraud and abuse administrative statute which section deals with the failure to file required documents and reports, to make an exception for failure to file accident reports, which will be prosecuted pursuant to the K.S.A. 44-557 proceeding. (DRAFT ATTACHED.)

6. **Proposed to amendments to K.S.A. 44-557a:** This proposed amendment would allow the Division of Workers Compensation to collect not only the medical information it now collects, but also hospital charges and related diagnostic procedure codes. As an aside, the Division will be amending its maximum medical fee schedule this year (1999) and a new prospective payment system for hospitals, for the purposes of cost containment, will be proposed. A task force of various business interests and hospital interests have met over the prior year to examine a prospective payment system for hospitals under the diagnosis related group method (DRG's). In so doing, it was discovered that the Division really had no data, nor any way to collect data, concerning hospital charges; this proposed amendment would do so. (DRAFT ATTACHED.)
7. **Proposed amendment to K.S.A. 44-510c:** Modifications to temporary total disability are done at the preliminary hearing stage after the 1993 amendments. This proposed deletion of language referring to review and modification would keep it consistent. (DRAFT ATTACHED.)
8. **New section on post-award medical proceedings:** setting forth a new procedure for post-award medical treatment requests allowing for an evidentiary hearing as well as dealing with attorneys fees and appeals therefrom. Should there be a post-award

application for additional medical expenses, there would be a separate opportunity for hearing and such request would move to a second priority position, following preliminary hearings (which are at the top of the trial docket). (DRAFT ATTACHED.)

9. **The necessity to clean up ambiguities created by K.S.A. 1998 Supp. 44-503; 44-503b; 44-503c in regard to subcontractors:** Besides the interesting public policy issues, House Bills No. 2591 (effective April 30, 1998) and 2831 (effective April 16, 1998) created a conflict in K.S.A. 44-503. Specifically, House Bill 2831 (signed by the Governor on April 7, 1998) contained no amendments to K.S.A. 44-503 (a) whereas House Bill 2591 (signed by the Governor April 20, 1998) contained an amendment to K.S.A. 44-503 (a) at the end of that section as follows: "for the purposes of this subsection, a worker shall not include an individual who is a self-employed subcontractor." Further, House Bill No. 2831 struck K.S.A. 44-503 (h) and inserted "New section 2"; whereas, House Bill 2591 put the old wording of K.S.A. 44-503 (h) back in but did not include the new Section 2 of House Bill 2831.

~~44-501a. Application of 44-501. The provisions of K.S.A. 44-501, as amended by section 1 of this act, shall apply to any claim brought under the Kansas workers compensation act for an injury which occurred prior to the effective date of this act, unless the claim has been fully adjudicated.~~

**44-519. Certificate of health care provider as evidence.** *Except in preliminary hearings conducted under K.S.A. 44-534a, and amendments thereto, no report of any examination of any employee by a health care provider, as provided for in the workers compensation act and no certificate issued or given by the health care provider making such examination, shall be competent evidence in any proceeding for the determining or collection of compensation unless supported by the testimony of such health care provider, if this testimony is admissible, and shall not be competent evidence in any case where testimony of such health care provider is not admissible.*

**44-557. Employer's duty to report accidents; limitation of actions; civil penalty for failure to report; recovery of penalties.** (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 supervisor has knowledge, which report shall be made upon a form to be prepared by the director, within 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 28 days after receipt of knowledge of such death, stating such fact and any other facts in connection with such death or as to the dependents of such deceased employee which the director may require. Such report or reports shall not be used nor considered as evidence before the director, any administrative law judge, the board or in any court in this state.

(c) No limitation of time in the workers compensation act shall begin to run unless a report of the accident as provided in this section has been filed at the office of the director if the injured employee has given notice of accident as provided by K.S.A. 44-520 and amendments thereto, except that any proceeding for compensation for any such injury or death, where report of the accident has not been filed, must be commenced by ~~filing an application with the director~~ *servicing upon the employer a written claim pursuant to K.S.A. 44-520a and amendments thereto* within one year from the date of the accident, suspension of payment of disability compensation, the date of the last medical treatment authorized by the employer, or the death of such employee referred to in K.S.A. 44-520a and amendments thereto.

(d) The ~~knowing repeated~~ failure of any employer or workers compensation insurance carrier to file or cause to be filed any report required by this section shall be subject to a civil penalty for each violation of not to exceed \$250.

(e) Any civil penalty imposed by this section shall be recovered ~~in an action in the district court of Shawnee county instituted and prosecuted~~, by the *assistant attorney general* upon information received from the director, *by issuing and serving upon such employer a summary order or statement of the charges with respect thereto and a hearing shall be conducted thereon in accordance with the provisions of the Kansas administrative procedure act*, except that, at the discretion of the director, such civil penalties may be assessed as costs in a workers compensation proceeding by an administrative law judge upon a showing by the ~~director~~ *assistant attorney general* that a required report was not filed which pertains to a claim pending before the administrative law judge.

**44-520a. Claim for compensation; time limitation.** (a) No proceedings for compensation shall be maintainable under the ~~workmen's~~ workers compensation act unless a written claim for compensation shall be served upon the employer by delivering such written claim to ~~him~~ *the employer* or his duly authorized agent, or by delivering such written claim to ~~him~~ *the employer* by registered or certified mail within two hundred (200) days after the date of the accident, or in cases where compensation payments have been suspended within two hundred (200) days after the date of the last payment of compensation; or within one (1) year after the death of the injured employee if death results from the injury within five (5) years after the date of such accident, *except as provided in K.S.A. 44-557 and amendments thereto.*

(b) Where recovery is denied to any person in a suit brought at law or in admiralty or under the federal employers' liability acts to recover damages in respect of bodily injury or death on the ground that such person was an employee and the defendant was an employer subject to and within the meaning of the ~~workmen's~~ workers compensation act, or when recovery is denied to any person in an action brought under the provisions of the ~~workmen's~~ workers compensation law of any other state or jurisdiction on the ground that such person was an employee under and subject to the provisions of the ~~workmen's~~ workers compensation act of this state, the limitation of time prescribed in subsection (a) of this section shall begin to run only from the date of termination or abandonment of such suit or compensation proceeding, when such suit or compensation proceeding is filed within two hundred (200) days after the date of the injury or death complained of.



**44-5,120. Fraudulent or abusive acts or practices; defined; powers, duties and functions of director of workers compensation and commissioner of insurance; application of section; administrative investigation and enforcement; hearings; costs; cease and desist orders; civil penalties; repayments, interest; review.** (a) The director of workers compensation is hereby authorized and directed to establish a system for monitoring, reporting and investigating suspected fraud or abuse by any persons who are not licensed or regulated by the commissioner of insurance in connection with securing the liability of an employer under the workers compensation act or in connection with claims or benefits thereunder. The commissioner of insurance is hereby authorized and directed to establish a system for monitoring, reporting and investigating suspected fraud or abuse by any persons who are licensed or regulated by the commissioner of insurance in connection with securing the liability of an employer under the workers compensation act or in connection with claims thereunder.

(b) This section applies to:

- (1) Persons claiming benefits under the workers compensation act;
- (2) employers subject to the requirements of the workers compensation act;
- (3) insurance companies including group-funded self-insurance plans covering Kansas employers and employees;

(4) any person, corporation, business, health care facility that is organized either for profit or not-for-profit and that renders medical care, treatment or services in accordance with the provisions of the workers compensation act to an injured employee who is covered thereunder; and

(5) attorneys and other representatives of employers, employees, insurers or other entities that are subject to the workers compensation act.

(c) The commissioner of insurance may examine the workers compensation records of insurance companies or self-insurers as necessary to ensure compliance with the workers compensation act. Each insurance company providing workers compensation insurance in Kansas, the company's agents, and those entities that the company has contracted to provide review services or to monitor services and practices under the workers compensation act shall cooperate with the commissioner of insurance, and shall make available to the commissioner any records or other necessary information requested by the commissioner. The commissioner of insurance shall conduct an examination authorized by this subsection in accordance with the provisions of K.S.A. 40-222 and 40-223 and amendments thereto.

(d) Fraudulent or abusive acts or practices for purposes of the workers compensation act include, willfully, knowingly or intentionally:

(1) Collecting from an employee, through a deduction from wages or a subsequent fee, any premium or other fee paid by the employer to obtain workers compensation insurance coverage;

(2) misrepresenting to an insurance company or the insurance department, the classification of employees of an employer, or the location, number of employees, or true identity of the employer with the intent to lessen or reduce the premium otherwise chargeable for workers compensation insurance coverage;

(3) lending money to the claimant during the pendency of the workers compensation claim by an attorney representing the claimant, but this provision shall not prohibit the attorney from assisting the claimant in obtaining financial assistance from another source, except that (A) the attorney shall not have a financial interest, directly or indirectly, in the source from which the loan or other financial assistance is secured and (B) the attorney shall not be personally liable in any way

for the credit extended to the claimant;

(4) obtaining, denying or attempting to obtain or deny payments of workers compensation benefits for any person by:

(A) Making a false or misleading statement;

(B) misrepresenting or concealing a material fact;

(C) fabricating, altering, concealing or destroying a document; or

(D) conspiring to commit an act specified by clauses (A), (B) or (C) of this subsection

(d)(4);

(5) bringing, prosecuting or defending an action for compensation under the workers compensation act or requesting initiation of an administrative violation proceeding that, in either case, has no basis in fact or is not warranted by existing law or a good faith argument for the extension, modification or reversal of existing law;

(6) breaching a provision of an agreement approved by the director;

(7) withholding amounts not authorized by the director from the employee's or legal beneficiary's weekly compensation payment or from advances from any such payment;

(8) entering into a settlement or agreement without the knowledge and consent of the employee or legal beneficiary;

(9) taking a fee or withholding expenses in excess of the amounts authorized by the director;

(10) refusing or failing to make prompt delivery to the employee or legal beneficiary of funds belonging to the employee or legal beneficiary as a result of a settlement, agreement, order or award;

(11) misrepresenting the provisions of the workers compensation act to an employee, an employer, a health care provider or a legal beneficiary;

(12) instructing employers not to file required documents with the director;

(13) instructing or encouraging employers to violate the employee's right to medical benefits under the workers compensation act;

(14) failing to tender promptly full death benefits if a clear and legitimate dispute does not exist as to the liability of the insurance company, self-insured employer or group-funded self-insurance plan;

(15) failing to confirm medical compensation benefits coverage to any person or facility providing medical treatment to a claimant if a clear and legitimate dispute does not exist as to the liability of the insurance carrier, self-insured employer or group-funded self-insurance plan;

(16) failing to initiate or reinstate compensation when due if a clear and legitimate dispute does not exist as to the liability of the insurance company, self-insured employer or group-funded self-insurance plan;

(17) misrepresenting the reason for not paying compensation or terminating or reducing the payment of compensation;

(18) refusing to pay compensation as and when the compensation is due;

(19) refusing to pay any order awarding compensation;

(20) refusing to timely file required reports or records under the workers compensation act, *except as provided in K.S.A. 44-557, and amendments thereto*; and

(21) for a health care provider to submit a charge for health care that was not furnished.

(e) Whenever the director or the commissioner of insurance has reason to believe that any person has engaged or is engaging in any fraudulent or abusive act or practice in connection with the

conduct of Kansas workers compensation insurance, claims, benefits or services in this state, that such fraudulent or abusive act or practice is not subject to possible proceedings under K.S.A. 40-2401 through 40-2421 and amendments thereto by the commissioner of insurance, and that a proceeding by the director or the commissioner of insurance, in the case of any person licensed or regulated by the commissioner, with respect thereto would be in the interest of the public, the director or the commissioner of insurance, in the case of any person licensed or regulated by the commissioner, shall issue and serve upon such person a summary order or statement of the charges with respect thereto and shall conduct a hearing thereon in accordance with the provisions of the Kansas administrative procedure act. Complaints filed with the director or the commissioner of insurance may be dismissed by the director or the commissioner of insurance on their own initiative, and shall be dismissed upon the written request of the complainant, if the director or commissioner of insurance has not conducted a hearing or taken other administrative action dismissing the complaint within 180 days of the filing of the complaint. Any such dismissal of a complaint in accordance with this section shall constitute final action by the director or commissioner of insurance which shall be deemed to exhaust all administrative remedies under K.S.A. 44-5,120 and amendments thereto for the purpose of allowing subsequent filing of the matter in court by the complainant. Dismissal of a complaint in accordance with this section shall not be subject to appeal or judicial review.

(f) If, after such hearing, the director or the commissioner of insurance, in the case of any person licensed or regulated by the commissioner, determines that the person charged has engaged in any fraudulent or abusive act or practice, any costs incurred as a result of conducting any administrative hearing authorized under the provisions of this section may be assessed against the person or persons found to have engaged in such acts. In an appropriate case to reimburse costs incurred, such costs may be awarded to a complainant. As used in this subsection, "costs" include witness fees, mileage allowances, any costs associated with reproduction of documents which become a part of the hearing record and the expense of making a record of the hearing.

(g) If, after such hearing, the director or the commissioner of insurance, in the case of any person licensed or regulated by the commissioner, determines that the person or persons charged have engaged in a fraudulent or abusive act or practice the director or the commissioner of insurance, in the case of any person licensed or regulated by the commissioner, shall issue an order or summary order requiring such person to cease and desist from engaging in such act or practice and, in the exercise of discretion, may order any one or more of the following:

(1) Payment of a monetary penalty of not more than \$2,000 for each and every act constituting the fraudulent or abusive act or practice, but not exceeding an aggregate penalty of \$20,000 in a one-year period;

(2) redress of the injury by requiring the refund of any premiums paid by and requiring the payment of any moneys withheld from, any employee, employer, insurance company or other person or entity adversely affected by the act constituting a fraudulent or abusive act or practice;

(3) repayment of an amount equal to the total amount that the person received as benefits or any other payment under the workers compensation act and any amount that the person otherwise benefited as a result of an act constituting a fraudulent or abusive act or practice, with interest thereon determined so that such total amount, plus any accrued interest thereon, bears interest, from the date of the payment of benefits or other such payment or the date the person was benefited, at the current rate of interest prescribed by law for judgments under subsection (e)(1) of K.S.A. 16-204 and amendments thereto per month or fraction of a month until repayment.

(h) After the expiration of the time allowed for filing a petition for review of an order issued under this section, if no such petition has been duly filed within such time, the director at any time, after notice and opportunity for hearing in accordance with the provisions of the Kansas administrative procedure act, may reopen and alter, modify or set aside, in whole or in part, any order issued under this section, whenever in the director's opinion conditions of fact or of law have so changed as to require such action or if the public interest so requires.

(i) Upon the order of the director or the commissioner of insurance, in the case of any person licensed or regulated by the commissioner, after notice and hearing in accordance with the provisions of the Kansas administrative procedure act, any person who violates a cease and desist order of the director or the commissioner of insurance, in the case of any person licensed or regulated by the commissioner, issued under this section may be subject, at the discretion of the director or the commissioner of insurance, in the case of any person licensed or regulated by the commissioner, to a monetary penalty of not more than \$10,000 for each and every act or violation, but not exceeding an aggregate penalty of \$50,000 for any six-month period in addition to any penalty imposed pursuant to subsection (g).

(j) Any civil fine imposed under this section shall be subject to review in accordance with the act for judicial review and civil enforcement of agency actions in the district court in Shawnee county.

(k) All moneys received under this section for costs assessed, which are not awarded to a complainant, or monetary penalties imposed shall be deposited in the state treasury and credited to the workers compensation fee fund.

(l) Any person who refers a possibly fraudulent or abusive practice to any state or governmental investigative agency, shall be immune from civil or criminal liability arising from the supply or release of such referral as long as such referral is made in good faith with the belief that a fraudulent or abusive practice has, is or will occur and said referral is not made by the person or persons who are in violation of the workers compensation act in order to avoid criminal prosecution or administrative hearings.



**44-557a. Compilation and publication of statistics; database of information; submission of data; contracts for actuarial or statistical services.** (a) The director shall: (1) Compile and publish statistics to determine the causation of compensable disabilities in the state of Kansas and (2) compile and maintain a database of information on claim characteristics and costs related to open and closed claims, in order to determine the effectiveness of the workers compensation act to provide adequate indemnity, medical and vocational rehabilitation compensation to injured workers and to return injured workers to remunerative employment. The commissioner of insurance shall cooperate with the director and shall make available any information which will assist the director in compiling such information and statistics and may contract with the director and the secretary of the department of health and environment to collect such information as the director deems necessary.

(b) Each self-insured employer, group-funded workers compensation pool, insurance carrier and vocational rehabilitation provider shall submit to the director the disposition of a statistically significant sample of open and closed claims under the act and, in connection with the closing of each claim in which payments were made, the following: (1) The dates, time intervals, amounts and types of weekly disability payments made, (2) the dates and gross amounts of payments made to each type of medical compensation provider, (3) the dates and type of service for which payment was made and the gross amounts paid to each vocational rehabilitation provider, and (4) the dates and types of fees paid as claim costs. Each self-insured employer, group-funded workers compensation pool, insurance carrier, vocational rehabilitation provider, ~~health care provider~~, or health care facility shall submit medical information, by procedure, charge and zip code of the provider, *or by hospital charge and related diagnostic and procedure codes* in order to set the maximum medical fee schedule. The director of workers compensation may adopt and promulgate such rules and regulations as the director deems necessary for the purposes of administering and enforcing the provisions of this section.

(c) The director may contract for professional actuarial or statistical services to provide assistance in determining the types of information and the methods of selecting and analyzing information as may be necessary for the director to conduct studies of open and closed claims under the workers compensation act and to enable the director to make valid statistical conclusions as to the distribution of costs of workers compensation benefits.

(d) The director shall obtain such office and computer equipment and employ such additional clerical help as the director deems necessary to gather such information and prepare such statistics.

**44-510c. Compensation for permanent total and temporary total disabilities.** Where death does not result from the injury, compensation shall be paid as provided in K.S.A. 44-510 and amendments thereto and as follows:

(a) (1) Where permanent total disability results from the injury, weekly payments shall be made during the period of permanent total disability in a sum equal to 662/3% of the average gross weekly wage of the injured employee, computed as provided in K.S.A. 44-511 and amendments thereto, but in no case less than \$25 per week nor more than the dollar amount nearest to 75% of the state's average weekly wage, determined as provided in K.S.A. 44-511 and amendments thereto, per week. The payment of compensation for permanent total disability shall continue for the duration of such disability, subject to review and modification as provided in K.S.A. 44-528 and amendments thereto.

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

(b) (1) Where temporary total disability results from the injury, no compensation shall be paid during the first week of disability, except that provided in K.S.A. 44-510 and amendments thereto, unless the temporary total disability exists for three consecutive weeks, in which case compensation shall be paid for the first week of such disability. Thereafter weekly payments shall be made during such temporary total disability, in a sum equal to 662/3% of the average gross weekly wage of the injured employee, computed as provided in K.S.A. 44-511 and amendments thereto, but in no case less than \$25 per week nor more than the dollar amount nearest to 75% of the state's average weekly wage, determined as provided in K.S.A. 44-511 and amendments thereto, per week. ~~The payment of compensation for temporary total disability shall continue for the duration of any such disability, subject to review and modification as provided in K.S.A. 44-528 and amendments thereto.~~

(2) Temporary total disability exists when the employee, on account of the injury, has been rendered completely and temporarily incapable of engaging in any type of substantial and gainful employment. A release issued by a health care provider with temporary medical limitations for an employee may or may not be determinative of the employee's actual ability to be engaged in any type of substantial and gainful employment, except that temporary total disability compensation shall not be awarded unless the opinion of the authorized treating health care provider is shown to be based on an assessment of the employee's actual job duties with the employer, with or without accommodation.

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



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

New Section 1. (a) At any time after the entry of an award for compensation, the employee may make application for a hearing, in such form as the director may require for the furnishing of medical treatment. Such post-award hearing shall be held by the assigned administrative law judge, in any county designated by the administrative law judge, and the judge shall conduct the hearing as provided in K.S.A. 44-523, and amendments thereto. The administrative law judge can make an award for further medical care if the administrative law judge finds that the care is necessary to cure or relieve the effects of the accidental injury which was the subject of the underlying award. No post-award benefits shall be ordered without giving all parties to the award the opportunity to present evidence, including taking testimony on any disputed matters. A finding with regard to a disputed issue shall be subject to a full review by the board under subsection (b) of K.S.A. 44-551 and amendments thereto. Any action of the board pursuant to post-award orders shall be subject to review under K.S.A. 44-556 and amendments thereto.

(b) Any application for hearing made pursuant to this section receive priority setting by the administrative law judge, only superseded by preliminary hearings pursuant to K.S.A. 44-534a and amendments thereto. The parties shall meet and confer prior to the hearing pursuant to this section, but a prehearing settlement conference shall not be necessary. The administrative law judge shall have authority to award medical treatment relating back to the entry of the underlying award, but in no event shall such medical treatment relate back more than six months following the filing of said application for post-award medical treatment. Reviews taken under this section shall receive priority settings before the board, only superseded by reviews for preliminary hearings. A decision shall be rendered by the board within 30 days from the time the review hereunder is submitted.

(c) The administrative law judge may award attorney fees and costs on the claimant's behalf consistent with subsection (g) of K.S.A. 44-536 and amendments thereto.