

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

The meeting was called to order by Chairperson Al Lane at 9:05 a.m. on January 31, 2001 in Room 521-S of the Capitol.

All members were present except:   Rep. John Ballou - excused  
  Rep. Gwen Welshimer - excused

Committee staff present:       Jerry Donaldson, Legislative Research Department  
  Bev Adams, Committee Secretary

Conferees appearing before the committee:   Steve Rarrick, Attorney General's Office  
  T. C. Anderson, Ks Society of Certified Public Accountants  
  Terry Leatherman, KCCI  
  Phil Harness, KDHR

Others attending: See attached list

Chairman Lane read the fiscal note for **HB 2087**, which was heard on January 30, 2001.

Rep. Long made a motion to adopt the minutes of January 23, 2001 as written. The motion was seconded by Rep. Humerickhouse. The motion carried.

### **Introduction of Bills**

Steve Rarrick, Deputy Attorney General for Consumer Protection, appeared on behalf of Attorney General Carla J. Stovall to introduce a bill that amends the Charitable Organizations and Solicitations Act. (Attachment 1) Rep. Grant moved that the bill be introduced as a committee bill. It was seconded by Rep. Ruff. The motion carried.

T. C. Anderson, Kansas Society of Certified Public Accountants, requested that the committee introduce a bill concerning certified public accountants and peer review. (Attachment 2) Rep. Humerickhouse made a motion to introduce the bill. Rep. Long seconded the motion. The motion passed.

Terry Leatherman, Kansas Chamber of Commerce and Industry (KCCI) requested a bill that amends the local living wage ordinances. Rep. Long made a motion to introduce the bill as a committee bill. It was seconded by Rep. Patterson. The motion passed.

Rep. Swenson made a motion that a bill be introduced that would amend the employment security law providing eligibility for new parents. Rep. Ruff seconded the motion. The motion carried.

Phil Harness, Director of the Division of Workers Compensation, Kansas Department of Human Resources (KDHR), appeared with recommendations from the Workers Compensation Advisory Council to introduce a bill that would make three changes to the Workers Compensation Act. (Attachment 3) Rep. Grant made the motion to introduce the bill as a committee bill. The motion was seconded by Rep. Levinson. The motion passed.

No others were present to introduce bills.

Chairman Lane adjourned the meeting at 9:20 a. m. The next meeting is scheduled for Tuesday, February 6, 2001.





CARLA J. STOVALL  
ATTORNEY GENERAL

State of Kansas

## Office of the Attorney General

### CONSUMER PROTECTION/ANTITRUST DIVISION

120 S.W. 10TH AVENUE, 2ND FLOOR, TOPEKA, KANSAS 66612-1597  
PHONE: (785) 296-3751 FAX: 291-3699

Steve Rarrick, Deputy Attorney General  
Consumer Protection Division  
Office of Attorney General Carla J. Stovall  
Before the House Business, Commerce & Labor Committee  
Re: Bill Introduction  
January 31, 2001

CONSUMER HOTLINE  
1-800-432-2310

Chairperson Lane and Members of the Committee:

Thank you for the opportunity to appear on behalf of Attorney General Carla J. Stovall today to introduce a bill for your consideration. My name is Steve Rarrick and I am the Deputy Attorney General for Consumer Protection.

The bill the Attorney General is proposing would amend the Charitable Organizations and Solicitations Act as follows:

- Making it a deceptive act to fail to provide, when requested, the percentage of the cost of fund raising incurred or anticipated to be incurred as a percent of contributions received. Charitable fund raisers often take more than 80%, and sometimes as high as 98% of contributions made, so we believe this disclosure requirement is needed.
- Making it a deceptive act to send or deliver a solicitation which can reasonably be interpreted as a bill, invoice, or statement of account due, unless the solicitation contains a specified notice (modeled after a notice required under the Kansas Consumer Protection Act) that makes it clear it is not a bill, invoice, or statement of account due.
- Creating a telephone solicitations statute (modeled after K.S.A. §50-670, the Consumer Protection Act provision applicable to commercial telemarketers) which would:
  - require specified disclosures during a telemarketing solicitation, including the disclosure of who is calling, who they are calling for, why they are calling, and where they are calling from.
  - require the solicitor to terminate the call if a negative response is given.
  - require a live operator or an automated dialing-announcing device to answer the line within five seconds of the call.
  - prohibit use of professional courier services to obtain payment.

I have a draft of the proposal for your review, and would be happy to answer questions of the Chair or any member of the Committee.

**House Business, Commerce & Labor Committee**

**1-31-01**

**Attachment 1**

Section 1. K.S.A. 17-1769 is hereby amended to read as follows:  
17-1769. The following acts and practices are hereby declared unlawful as applied to the planning, conduct or execution of any solicitation or charitable purpose:

(a) Operating in violation of, or failing to comply with, any of the requirements of this act;

(b) utilizing any deceptive acts or practices whether or not any person has in fact been misled. Deceptive acts or practices include, but are not limited to, the following:

(1) The intentional use in any solicitation of exaggeration, innuendo or ambiguity as to a material fact; ~~and~~

(2) the intentional failure to state a material fact, or the intentional concealment, suppression or omission of a material fact in any solicitation;

(3) *the failure to provide upon the request of any person the percentage of the cost of fund raising incurred or anticipated to be incurred as a percent of contributions received; and*

(4) *sending or delivering a solicitation which could reasonably be interpreted or construed as a bill, invoice or statement of account due, unless such solicitation contains the following notice, on its face, in clear, conspicuous and legible type in contrast by typography, layout or color with other printing on its face:*

*"THIS IS A SOLICITATION FOR A CHARITABLE CONTRIBUTION AND NOT A BILL, INVOICE OR STATEMENT OF ACCOUNT DUE. YOU ARE UNDER NO OBLIGATION TO MAKE ANY PAYMENTS";*

(c) utilizing any unconscionable acts or practices. An unconscionable act or practice violates this act whether it occurs before, during or after the solicitation.

(1) The unconscionability of an act or practice is a question for the court.

(2) In determining whether an act or practice is unconscionable, the court shall consider circumstances which the charitable organization or fund raiser knew or had reason to know including, but not limited to, the following:

(A) Taking advantage of a person's inability to reasonably protect such person's interests because of the person's physical infirmity, ignorance, illiteracy, inability to understand the language of a solicitation or similar factor; and

(B) using undue pressure in soliciting;

(d) utilizing any representation that implies the contribution is for or on behalf of a charitable organization or utilizing any emblem, device or printed matter belonging to or associated with a charitable organization, without obtaining authorization in writing from the charitable organization;

(e) utilizing a name, symbol or statement so closely related or similar to that used by another charitable organization that the use thereof would tend to confuse or mislead a solicited person, whether or not any person has in fact been misled;

(f) misrepresenting or misleading any person in any manner to believe that the person on whose behalf a solicitation or charitable purpose is being conducted is a charitable organization;

(g) using donations for purposes other than those stated in an organization's articles of incorporation or current registration statements filed with the secretary of state;

(h) using donations for purposes other than those stated in solicitations;

(i) using donations for other than charitable purposes;

(j) misrepresenting or misleading any person in any matter, to believe that any other person or governmental unit sponsors, endorses or approves such solicitation or charitable

purpose when such other person has not given consent in writing to the use of such person's name for these purposes; and

(k) utilizing or exploiting the fact of registrations so as to lead any person to believe that such registration in any manner constitutes an endorsement or approval by the state.

New Section 2.

(a) As used in this section:

(1) "automatic dialing-announcing device" means any user terminal equipment which:

(A) When connected to a telephone line can dial, with or without manual assistance, telephone numbers which have been stored or programmed in the device or are produced or selected by a random or sequential number generator; or

(B) when connected to a telephone line can disseminate a recorded message to the telephone number called, either with or without manual assistance;

(2) "negative response" means a statement from a person indicating the person does not wish to listen to the solicitation or participate in the solicitation presented in the unsolicited telephone call;

(3) "telephone solicitor" means any natural person, firm, organization, partnership, association or corporation who makes or causes to be made a unsolicited telephone call, including, but not limited to, calls made by use of automatic dialing-announcing device;

(4) "unsolicited telephone call" means a call made by a telephone solicitor to a residential telephone number for the purpose of soliciting a charitable contribution from the person called, or for the purpose of obtaining information that will or may be used for the direct solicitation of a charitable contribution from the person called, other than a call made in response to an express request of the person called.

(b) Any telephone solicitor who makes an unsolicited telephone call to a residential telephone number shall:

(1) state the identity of the professional solicitor and the professional fund raiser;

(2) state the city and state from which the telephone solicitor is calling;

(3) state the identity of the charitable organization on whose behalf such person is soliciting;

(4) state the purpose of the call promptly upon making contact by telephone with the person who is the object of the telephone solicitation;

(5) promptly discontinue the solicitation if the person being solicited gives a negative response at any time during the unsolicited telephone call;

(6) hang up the phone, or in the case of an automatic dialing-announcing device operator, disconnect the automatic dialing-announcing device from the telephone line within 25 seconds of the termination of the call by the person being called; and

(7) a live operator or an automated dialing-announcing device shall answer the line within five seconds of the beginning of the call. If answered by an automated dialing-announcing device, the message provided shall include only the information required in subsection (b)(1) and (3), but shall not contain any solicitation.

(c) A telephone solicitor shall not withhold the display of the telephone solicitor's telephone number from a caller identification service when that number is being used for telemarketing purposes and when the telephone solicitor's service or equipment is capable of allowing the display of such number;

(d) A telephone solicitor shall not transmit any written information by facsimile machine or computer to a person after the person requests orally or in writing that such transmissions cease;

(e) A telephone solicitor shall not obtain by use of any professional delivery, courier or other pickup service receipt or possession of a person's payment;

(f) Local exchange carriers and telecommunications carriers shall not be responsible for the enforcement of the provisions of this section;

(g) Any violation of this section is an unconscionable act or practice under the Kansas charitable organizations and solicitations act.

(h) This section shall be part of and supplemental to the Kansas charitable organizations and solicitations act.

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## Permit Application

1-302b. (a) No applicant who holds a Kansas certificate issued by the board shall receive a permit to practice in this state as a certified public accountant until the applicant submits evidence satisfactory to the board of having completed one year of accounting experience. This experience shall include providing any type of service or advice involving the use of attest or nonattest skills all of which was verified by a certified public accountant holding an active license to practice, meeting requirements prescribed by the board by rule. This experience would be acceptable if it was gained through employment in government, industry, academia or public practice.

(b) Any individual permit holder who is responsible for supervising attest or compilation services and signs or authorizes someone to sign the accountant's report on any audit, review, compilation or the examination of prospective financial information on behalf of the firm, shall meet the experience or competency requirements, as adopted by the board through rules and regulations.

(c) Any individual permit holder who signs or authorizes someone to sign the accountant's report on any audit, review, compilation or the examination of prospective financial information on behalf of the firm, shall meet the experience or competency requirement of subsection (b).

(d) As an alternative to the requirements of subsection (a), an individual with an active license issued by another state who establishes such individual's principal place of business in this state shall request the issuance of both a certificate and a permit to practice from the board prior to establishing such principal place of business. The board may issue both a certificate and permit to such individual who obtains from the NASBA national qualification appraisal service verification that such individual's C.P.A. qualifications are substantially equivalent to the C.P.A. licensure requirements of the uniform accountancy act. An application under this section may be made through the NASBA qualifications appraisal service or similar organization approved by the board. Any individual meeting the requirements set forth in this subsection who is denied a certificate and a permit to practice shall have the opportunity to be heard pursuant to the Kansas administrative procedures act.

**T. C. Anderson**

## Renewal of Permits

1-310. (a) Permits to engage in the practice of certified public accountancy in this state shall be issued by the board to persons who have met the requirements under K.S.A. 1-301b, and amendments thereto.

(b) Each holder of a Kansas certificate, which is numbered with an odd number, who is qualified under K.S.A. 1-301b, and amendments thereto, shall have a permit to practice issued or renewed on a biennial basis which shall expire on the next July 1 which occurs after the date the permit was issued or renewed and which occurs in an odd-numbered year.

(c) Each holder of a Kansas certificate, which is numbered with an even number, who is qualified under K.S.A. 1-301b, and amendments thereto, shall have a permit to practice issued or renewed on a biennial basis which shall expire on the next July 1 which occurs after the date the permit was issued or renewed and which occurs in an even-numbered year.

(d) A person may renew a permit within 12 months of its expiration date if such person submits a complete and sufficient renewal application together with the fee prescribed by K.S.A. 1-301, and amendments thereto.

(e) As a condition for renewal of a permit to practice, the board shall require all permit holders to furnish with such applicant's renewal application, evidence of ~~participation in a peer review program unless waived pursuant to K.S.A. 1-501, and amendments thereto, and~~ participation in continuing education in accounting, auditing, or related areas of at least 80 hours during the two-year period for renewal unless the board waives all or a portion of the continuing education requirements. As a condition for renewal of a permit to practice, the board shall require permit holders who do not have their principal place of business in Kansas and who are not required to register pursuant to K.S.A. 1-308 and amendments thereto, to furnish with such applicant's renewal application evidence of participation in a peer review program unless waived for good cause as determined by the board. The board may adopt rules and regulations regarding peer review and continuing education including the number of continuing education hours required for each year of the two-year period and the type of continuing education.



(f) The board may exempt from the continuing education requirements an individual who holds a permit from another state if:

(1) The permit holder has a principal place of business located outside the state of Kansas;

(2) the permit holder verifies to the board's satisfaction that such person has met the continuing education requirements of the state in which the principal place of business is located;

(3) the board considers the continuing education requirements of the state in which the principal place of business is located to be substantially equivalent to those of Kansas; and

(4) the state in which the principal place of business is located extends the same exemption to Kansas permit holders who practice in that state.

(g) A person who fails to renew a permit within 12 months after its expiration may apply for reinstatement by making application on a form provided by the board, submitting a reinstatement fee as prescribed by K.S.A. 1-301 and amendments thereto, and submitting proof that such person has obtained 40 hours of qualifying continuing education within the preceding 12 months prior to applying for reinstatement.

## Disciplinary Action against an Individual

1-311. (a) The board may deny an application for a Kansas certificate, revoke or suspend any certificate issued under the laws of this state ~~including a Kansas certificate, or any registration granted under K.S.A. 1-308, and amendments thereto,~~ or may revoke, suspend, or refuse to renew any permit issued under K.S.A. 1-310 and amendments thereto, and any notification issued pursuant to [Revisor to insert citation from KSA 2000 Supplement] and amendments thereto, may censure the holder of any such permit, certificate, or notification ~~or registration~~, limit the scope of practice of any permit holder, and may impose an administrative fine not exceeding \$2,000 for any one or any combination of the following causes:

(1) Fraud or deceit in obtaining a certificate, permit, firm registration or notification;

(2) cancellation, revocation, suspension or refusal to renew a person's authority to practice for disciplinary reasons in any other jurisdiction for any cause;

(3) failure, on the part of a holder of a permit to practice or notification ~~and a registered firm~~ to maintain compliance with the requirements for issuance or renewal of such permit; ~~or notification or registration~~;

(4) revocation or suspension of the right to practice before any state or federal agency;

(5) dishonesty, fraud or gross negligence in the practice of certified public accountancy or in the filing or failure to file the certificate holder's own income tax returns;

(6) violation of any provision of this act or rule and regulation of the board except for a violation of a rule of professional conduct;

(7) willful violation of a rule of professional conduct;

(8) violation of any order of the board;

(9) conviction of any felony, or of any crime an element of which is dishonesty or fraud, under the laws of the United States, of Kansas or of any other state, if the acts involved would have constituted a crime under the laws of Kansas;

(10) performance of any fraudulent act while holding a Kansas certificate;

(11) making any false or misleading statement or verification, in support of an application for a certificate, permit, notification or firm registration filed by another;

(12) failure to establish timely compliance with peer review pursuant to K.S.A. 1-501 and amendments; and

~~(12)~~ (13) any conduct reflecting adversely on a permit holder's fitness to practice certified public accountancy.

(b) In lieu of or in addition to any remedy specifically provided in subsection (a), the board may require of a permit holder satisfactory completion of such continuing education programs as the board may specify.

(c) All administrative proceedings pursuant to this section shall be conducted in accordance with the provisions of the Kansas administrative procedure act and the act for judicial review and civil enforcement of agency actions.

## Disciplinary Action against Firms

1-312. Grounds for revocation or suspension of partnerships, professional corporations.  
Disciplinary action; Firms

~~After notice and hearing as provided by the Kansas administrative procedure act:~~  
~~(a) The board shall revoke or suspend the registration of any registered firm if at any time it does not have all the qualifications prescribed by K.S.A. 1-308, and amendments thereto; (b) the board may revoke or suspend the registration of any registered firm or may revoke, suspend or refuse to renew the permit to practice of any member of a registered firm, or may censure the holder of any such permit for any of the causes enumerated in K.S.A. 1-311, and amendments thereto; (c) the board may revoke or suspend the registration of any registered firm upon the cancellation, revocation, suspension or refusal to renew the authority of the firm or any partner, officer, shareholder or member thereof to practice public accounting in any other state; and (d) the board may revoke or suspend the registration of a registered partnership if any corporate member thereof ceases to be a professional corporation in good standing under the professional corporation law of Kansas or if the board has revoked or suspended the permit to practice of any shareholder of such professional corporation.~~

(a) Except as provided in subsection (b), the board may deny an application to register a firm, revoke or suspend a firm's registration, censure a firm, limit the scope of practice of a firm, and/or impose such remedial action as it deems necessary to protect the public interest, and impose an administrative fine not exceeding \$2000 for any one or any combination of the following causes:

(1) failure to meet the requirements of K.S.A. 1-308 and amendments;

(2) fraud or deceit in obtaining a registration;

(3) revocation or suspension of a firm's right to practice before any state or federal agency;

(4) dishonesty, fraud or gross negligence in the practice of certified public accountancy;

(5) violation of any provision of Chapter 1 of the Kansas statutes annotated and rules and regulations promulgated by the board except for a violation of a rule of professional conduct;

(6) willful violation of a rule of professional conduct;

(7) violation of any order of the board;

(8) cancellation, revocation, suspension or refusal to renew the authority of a firm to practice certified public accountancy in any state;

(9) conviction of a firm of any felony, or of any crime an element of which is dishonesty or fraud, under the laws of the United States, of Kansas or of any other state, if the acts involved would have constituted a crime under the laws of Kansas;

(10) failure to establish timely compliance with peer review pursuant to K.S.A. 1-501 and amendments;

(b) In actions arising under peer review, the board may limit the scope of practice of a firm; limit the scope of practice of any permit holder under K.S.A. 1-311, and amendments thereto, and/or take such remedial action as the Board deems necessary to protect the public interest, for failure to comply with generally accepted accounting principles, generally accepted auditing standards and other similarly recognized authoritative technical standards under the following conditions:

(1) the firm has received at least two modified peer review reports during 12 consecutive years relating to attest services; and

(2) the board finds that the firm has exhibited a course of conduct that reflects a pattern of noncompliance with applicable professional standards and practices; or

(3) the firm has failed to abide by remedial measures required by a peer review committee or the board.

(c) Subsection (b) does not preclude the board from limiting the scope of practice of a firm; limiting the scope of practice of a permit holder under K.S.A. 1-311, and amendments thereto or taking such remedial action as the Board deems necessary to protect the public interest, after a review of an adverse peer review report based on matters relating to attest services if the board determines that the firm failed to comply with generally accepted accounting principles, generally accepted auditing standards and other similarly recognized authoritative technical standards.

(d) All administrative proceedings pursuant to this section shall be conducted in accordance with the provisions of the Kansas administrative procedure act and the act for judicial review and civil enforcement of agency actions.

(e) The Board shall not have the power to assess fines under this Section if a fine has been assessed for the same or similar violation under the provisions of K.S.A. 1-311(a).

## Definitions (K.S.A. 1-321)

When used in this act, the following terms have the meanings indicated:

- (a) "Actively participate" means participation that is continuous as one's primary occupation.
- (b) "affiliated entity" means one that provides services to the CPA firm or provides services to the public that are complementary to those provided by the CPA firm.
- (c) "AICPA" means the American institute of certified public accountants.
- (d) "Attest" means providing the following financial statement services:
  - (1) Any audit or other engagement to be performed in accordance with the statements on auditing standards (SAS);
  - (2) any audit to be performed in accordance with the Kansas municipal audit guide;
  - (3) any review of a financial statement ~~or compilation of a financial statement~~ to be performed in accordance with the statements on standards for accounting and review services (SSARS);
  - (4) any examination of prospective financial information to be performed in accordance with the statements on standards for attestation engagements (SSAE); and
  - (5) the statements on standards and guide specified in this act shall be adopted by reference by the board pursuant to rulemaking and shall be those developed for general application by the AICPA or the Kansas division of accounts and reports.
- (e) "Board" means the Kansas board of accountancy established under K.S.A. 1-201 and amendments thereto.
- (f) "Certificate" means a certificate as a certified public accountant issued under K.S.A. 1-301 and amendments thereto, or a certificate as a certified public accountant issued after examination under the law of any other state.
- (g) "Client" means a person or entity that agrees with a permit holder to receive any professional service.
- (h) "Compilation" means providing a service to be performed in accordance with the statements on standards for accounting and review services (SSARS) or performed in accordance with the statements on standards for attestation engagements (SSAE)

that is presented in the form of financial statements, and/or information that is the representation of management without undertaking to express any assurance on the statements.

~~(h)~~ (i) "Equity capital" means (1) capital stock, capital accounts, capital contributions or undistributed earnings of a registered firm as referred to in K.S.A. 1-308 and amendments thereto; and (2) loans and advances to a registered firm made or held by its owners. "Equity capital" does not include an interest in bonuses, profit sharing plans, defined benefit plans or loans to a registered firm from banks, financial institutions or other third parties that do not actively participate in such registered firm.

~~(i)~~ (j) "Good moral character" means lack of a history of professional dishonesty or other felonious acts.

~~(j)~~ (k) "Active license" means a certificate or a permit to practice issued by another state that is currently in force and authorizes the holder to practice certified public accountancy.

~~(k)~~ (l) "Licensee" means the holder of a certificate or a permit to practice issued by this state or another state.

~~(l)~~ (m) "Manager" means a manager of a limited liability company.

~~(m)~~ (n) "Member" means a member of a limited liability company.

~~(n)~~ (o) "NASBA" means the national association of state boards of accountancy.

~~(o)~~ (p) "Nonattest" means providing the following services:

(1) The preparation of tax returns and providing advice on tax matters;

(2) the preparation of any compilation;

~~(2)~~ (3) management advisory, consulting, litigation support and assurance services, except for attest services;

~~(3)~~ (4) financial planning; and

~~(4)~~ (5) any other financial service not included in the statements on auditing standards, the statements on standards for accounting and review services, the standards for attestation engagements as developed by the American institute of certified public accountants or as defined by the board.

~~(p)~~ (q) "Practice of certified public accountancy" means performing or offering to perform attest or nonattest services for the public while using the designation "certified public accountant" or "C.P.A." in conjunction with such services.

(q) (r) "Practice of public accountancy" means performing or offering to perform attest or nonattest services for the public by a person not required to have a permit to practice or a firm not required to register with the board.

(r) (s) "Professional" means arising out of or related to the specialized knowledge or skills associated with CPAs.

(s) (t) "Report," when used with reference to financial statements, means an opinion, report or other form of language that states or implies assurance as the reliability of any financial statements and that also includes or is accompanied by any statement or implication that the person or firm issuing it has special knowledge or competence in accounting or auditing. Such a statement or implication of special knowledge or competence may arise from use, by the issuer of the report, of names or titles indicating that the person or firm is an accountant or auditor or from the language of the report itself. The term report includes any form of language which disclaims an opinion when such form of language is conventionally understood to imply any positive assurance as to the reliability of the financial statements referred to or special competence on the part of the person or firm issuing such language; and it includes any other form of language that is conventionally understood to imply such assurance or such special knowledge or competence.

(t) (u) "Rule" means any rule or regulation adopted by the board.

(u) (v) "State" means any state of the United States, the District of Columbia, Puerto Rico, the U.S. Virgin Islands and Guam; except that "this state" means the state of Kansas.

(v) (w) "Substantial equivalency" is a determination by the board of accountancy or its designee that the education, examination and experience requirements contained in the statutes and administrative rules of another jurisdiction are comparable to, or exceed the education, examination and experience requirements contained in the uniform accountancy act or that an individual CPA's education, examination and experience qualifications are comparable to or exceed the education, examination and experience requirements contained in the uniform accountancy act.

(w) (x) "Uniform accountancy act" means model legislation issued by the AICPA and NASBA in existence on July 1, 2000. ~~The board shall adopt the act by reference pursuant to rulemaking. The board shall adopt the version of the act in existence on July 1, 2000.~~



## Peer review requirement for firms and creation of peer review privilege

1-501. ~~Quality review or peer~~ Peer review; condition for renewal of ~~permit to practice firm registration~~; ~~purpose~~; ~~time~~; ~~cost~~; ~~alternative program~~; ~~criteria~~; ~~remedial program~~; ~~revocation or suspension of permit, when~~; ~~waiver, conditions~~; ~~actions and reports privileged, when~~; immunity for participants in peer review.

Commencing with ~~permits~~ firm registrations scheduled for renewal ~~for the fiscal year beginning on July 1, 1994~~ December 31, 2001 and thereafter:

(a) The board of accountancy may require as a condition for renewal of a ~~permit to practice firm registration~~ that an applicant or the applicant's a firm that provides attest services undergo a ~~quality review or peer review~~ and submit evidence of such so that the board may determine the degree of the applicant's firm's compliance with generally accepted accounting principles, generally accepted auditing standards and other similarly recognized authoritative technical standards. The reviews shall occur at least once every three years with the cost of such review to be borne by the applicant or the applicant's ~~firm.~~ firm.

(b) The applicant's or applicant's firms' firm's completion of a ~~quality review or peer review~~ program endorsed or supported by the American institute of certified public accountants or other substantially similar programs shall satisfy the requirements of this section. The board shall provide for oversight of these programs by adoption of rules and regulations.

(c) ~~The board may establish criteria for determining when the results of a review under this section are satisfactory to the board. As a result of the review the board may suspend or revoke a permit to practice or firm registration when the results of the review under this section are unsatisfactory to the board. The board may renew a permit or firm registration when the results of the review under this section are unsatisfactory to the board if the applicant or applicant's firm agrees to follow a particular education or remedial program prescribed by the board.~~

(d) ~~Failure of an applicant or the applicant's firm to undergo a review under this section constitutes grounds for revocation or suspension by the board of a permit to practice or certificate as prescribed by > K.S. 1-311, and amendments thereto, or to revoke or suspend a firm registration as prescribed by > K.S. 1-312, and amendments thereto, unless the board determines that failure to have been due to a reasonable cause.~~

~~(e) (c) An applicant A firm, at the time of application, may request in writing upon forms provided by the board, a waiver from the review requirement. The board may grant a waiver if one or more of the following conditions are met: the firm does not perform or has not performed any attest services during the twelve month period preceding the date of application or for good cause as determined by the board.~~

~~(1) The applicant and the applicant's firm do not firm does not engage in and does not intend to engage in during the following year, financial reporting areas of practice, including but not limited to, financial audits, reviews and compilations;~~

~~(2) for reasons of health;~~

~~(3) due to military service;~~

~~(4) in instances of hardship; or~~

~~(5) for other good cause as determined by the board.~~

~~An applicant A firm granted a waiver pursuant to subsection (1) on the basis that the firm does not perform or intend to perform attest services shall immediately notify the board if the applicant or the applicant's firm firm engages in such practice and thus becomes subject to the review.~~

~~(f) (d) Except as provided by K.S. A. 60-437, and amendments thereto, and in actions by the board of accountancy to enforce this section, subsections (e) and (f), any reports, statements, memoranda, transcripts, findings, records, or working papers prepared and any opinions formulated, in connection with any quality review or peer review shall be privileged and shall not be subject to discovery, subpoena or other means of legal compulsion for their release to any person or entity or be admissible in evidence in any judicial or administrative proceeding, except that such privilege shall not exist when the material in question is involved in a dispute between a reviewer and the person or entity firm being reviewed.~~

~~(e) Nothing in subsection (d) shall limit the authority of the board to require a person whose work is the subject of a peer review or a firm to provide a copy of an adverse or modified peer review report and any documents that contain comments from peer reviewers, responses to comments from the person or firm and any document identifying follow-up requirements for the purpose of determining the person's or firm's compliance with generally accepted accounting principles, generally accepted auditing standards and other similarly recognized authoritative technical standards, provided~~

however, the Board may not request or require a person or firm subject to a peer review to provide a peer review report or any other document contained in this Section unless the peer review report has been accepted by a report acceptance committee under the peer review program after December 31, 2001.

(f) In any proceeding before the board in which discussion or admission into evidence of peer review report documents identified in subsection (e) is proposed, the board or presiding officer shall conduct that portion of the proceeding in closed session. In closing a portion of such proceeding, the board or presiding officer may exclude any person from the proceeding except the person whose work is the subject of peer review, members of the permit holder's firm, the attorneys representing the parties, the board's attorneys, necessary witnesses, and a court reporter. The board or presiding officer shall make the portions of the agency record in which such documents are disclosed subject to a protective order prohibiting further disclosure. Documents that are privileged under subsection (d) and that are considered during a closed proceeding shall not be subject to discovery, subpoena or other means of legal compulsion for their release to any person or entity. No person in attendance at a closed portion of such proceeding shall at a subsequent civil, criminal or administrative hearing, be required to testify regarding the existence or content of a document privileged under subsection (d) which was disclosed in a closed portion of a proceeding, nor shall such testimony be admitted into evidence in any subsequent civil, criminal or administrative hearing. All other evidence shall be presented as part of the proceeding in an open meeting. Offering any testimony or records in the open portion of a proceeding shall not be deemed a waiver of the peer review privilege created in subsection (d).

(g) No person who participates in the conduct of any peer review within the scope of this section shall be liable in damages to any person for any action taken or recommendation made in connection with the peer review process.

## REQUEST FOR BILL INTRODUCTION

The Workers Compensation Advisory Council requests introduction of a bill to cover the following proposed changes to the Workers Compensation Act:

1. Amend K.S.A. 44-511 so that the calculation of the average gross weekly wage of a person serving as a volunteer law enforcement officer, emergency medical technician, mobile intensive care technician, or firefighter, under the workers compensation act, shall be computed on the basis of the state's average weekly wage. As a corollary, K.S.A. 44-508 (b) should be amended to strike "ambulance attendants" in favor of "emergency medical technicians."
2. Amend K.S.A. 44-551 (b)(2)(C) to reflect the post-award medical procedure in 44-510k as opposed to proceeding under the preliminary hearing statute, K.S.A. 44-534a, when a case is on review from the administrative law judge to the board and compensability is not an issue when further medical compensation is ordered. Also, K.S.A. 44-556 (g) be amended to reflect the post-award medical procedure in 44-510k when a case is on review from the board to the court of appeals and compensability is not an issue to be decided on review.
3. Amend K.S.A. 44-510i be to reflect that a health care provider, hospital or other entity providing health care services shall be paid their usual charge, so long as reasonable, or the amount set out in the maximum medical fee schedule, whichever is less.

**Phil Harness**

**House Business, Commerce & Labor Committee**

**1-31-01**

**Attachment 3**

JAN 05 2001

KS. ST. WORKERS' COMPENSATION

**44-508. Definitions.** As used in the workers compensation act:

(a) "Employer" includes (1) any person or body of persons, corporate or unincorporate, and the legal representative of a deceased employer or the receiver or trustee of a person, corporation, association or partnership; (2) the state or any department, agency or authority of the state, any city, county, school district or other political subdivision or municipality or public corporation and any instrumentality thereof; and (3) for the purposes of community service work, the entity for which the community service work is being performed and the governmental agency which assigned the community service work, if any, if either such entity or such governmental agency has filed a written statement of election with the director to accept the provisions under the workers compensation act for persons performing community service work and in such case such entity and such governmental agency shall be deemed to be the joint employer of the person performing the community service work and both shall have the rights, liabilities and immunities provided under the workers compensation act for an employer with regard to the community service work, except that the liability for providing benefits shall be imposed only on the party which filed such election with the director, or on both if both parties have filed such election with the director; for purposes of community service work, "governmental agency" shall not include any court or any officer or employee thereof and any case where there is deemed to be a "joint employer" shall not be construed to be a case of dual or multiple employment.

(b) "Workman" or "employee" or "worker" means any person who has entered into the employment of or works under any contract of service or apprenticeship with an employer. Such terms shall include but not be limited to: Executive officers of corporations; professional athletes; persons serving on a volunteer basis as duly authorized law enforcement officers, ambulance attendants, emergency medical technician, mobile intensive care technicians, firefighters, but only to the extent and during such periods as they are so serving in such capacities; persons employed by educational, religious and charitable organizations, but only to the extent and during the periods that they are paid wages by such organizations; persons in the service of the state, or any department, agency or authority of the state, any city, school district, or other political subdivision or municipality or public corporation and any instrumentality thereof, under any contract of service, express or implied, and every official or officer thereof, whether elected or appointed, while performing official duties; persons in the service of the state as volunteer members of the Kansas department of civil air patrol, but only to the extent and during such periods as they are officially engaged in the performance of functions specified in K.S.A. 1993 Supp. 48-3302 and amendments thereto; volunteers in any employment, if the employer has filed an election to extend coverage to such volunteers; minors, whether such minors are legally or illegally employed; and persons performing community service work, but only to the extent and during such periods as they are performing community service work and if an election has been filed an election to extend coverage to such persons. Any reference to an employee who has been injured shall, where the employee is dead, include a reference to the employee's dependents, to the employee's legal representatives, or, if the employee is a minor or an incapacitated person, to the employee's guardian or conservator. Unless there is a valid election in effect which has been filed as provided in K.S.A. 44-542a and amendments thereto, such terms shall not include individual employers, limited or general partners or self-employed persons.

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

(2) "Members of a family" means only surviving legal spouse and children; or if no

**44-511. Average gross weekly wage computation; average yearly wage; state's average weekly wage.** (a) As used in this section:

(1) The term "money" shall be construed to mean the gross remuneration, on an hourly, output, salary, commission or other basis, at which the service rendered is recompensed in money by the employer, but it shall not include any additional compensation, as defined in this section, any remuneration in any medium other than cash, or any other compensation or benefits received by the employee from the employer or any other source.

(2) The term "additional compensation" shall include and mean only the following: (A) Gratuities in cash received by the employee from persons other than the employer for services rendered in the course of the employee's employment; (B) any cash bonuses paid by the employer within one year prior to the date of the accident, for which the average weekly value shall be determined by averaging all such bonuses over the period of time employed prior to the date of the accident, not to exceed 52 weeks; (C) board and lodging when furnished by the employer as part of the wages, which shall be valued at a maximum of \$25 per week for board and lodging combined, unless the value has been fixed otherwise by the employer and employee prior to the date of the accident, or unless a higher weekly value is proved; (D) the average weekly cash value of remuneration for services in any medium other than cash where such remuneration is in lieu of money, which shall be valued in terms of the average weekly cost to the employer of such remuneration for the employee; and (E) employer-paid life insurance, health and accident insurance and employer contributions to pension and profit sharing plans. In no case shall additional compensation include any amounts of employer taxes paid by the employer under the old-age and survivors insurance system embodied in the federal social security system. Additional compensation shall not include the value of such remuneration until and unless such remuneration is discontinued. If such remuneration is discontinued subsequent to a computation of average gross weekly wages under this section, there shall be a recomputation to include such discontinued remuneration.

(3) The term "wage" shall be construed to mean the total of the money and any additional compensation which the employee receives for services rendered for the employer in whose employment the employee sustains an injury by accident arising out of and in the course of such employment.

(4) The term "part-time hourly employee" shall mean and include any employee paid on an hourly basis: (A) Who by custom and practice or under the verbal or written employment contract in force at the time of the accident is employed to work, agrees to work, or is expected to work on a regular basis less than 40 hours per week; and (B) who at the time of the accident is working in any type of trade or employment where there is no customary number of hours constituting an ordinary day in the character of the work involved or performed by the employee.

(5) The term "full-time hourly employee" shall mean and include only those employees paid on an hourly basis who are not part-time hourly employees, as defined in this section, and who are employed in any trade or employment where the customary number of hours constituting an ordinary working week is 40 or more hours per week, or those employees who are employed in any trade or employment where such employees are considered to be full-time employees by the industrial customs of such trade or employment, regardless of the number of hours worked per day or per week.

(b) The employee's average gross weekly wage for the purpose of computing any compensation benefits provided by the workers compensation act shall be determined as follows:

(1) If at the time of the accident the money rate is fixed by the year, the average gross weekly

wage shall be the yearly rate so fixed divided by 52, plus the average weekly value of any additional compensation and the value of the employee's average weekly overtime as computed in paragraph (4) of this subsection.

(2) If at the time of the accident the money rate is fixed by the month, the average gross weekly wage shall be the monthly rate so fixed multiplied by 12 and divided by 52, plus the average weekly value of any additional compensation and the value of the employee's average weekly overtime computed as provided in paragraph (4) of this subsection.

(3) If at the time of the accident, the money rate is fixed by the week, the amount so fixed, plus the average weekly value of any additional compensation and the value of the employee's average weekly overtime as computed in paragraph (4) of this subsection, shall be the average gross weekly wage.

(4) If at the time of the accident the employee's money rate was fixed by the hour, the employee's average gross weekly wage shall be determined as follows: (A) If the employee was a part-time hourly employee, as defined in this section, the average gross weekly wage shall be determined in the same manner as provided in paragraph (5) of this subsection; (B) if the employee is a full-time hourly employee, as defined in this section, the average gross weekly wage shall be determined as follows: (i) A daily money rate shall first be found by multiplying the straight-time hourly rate applicable at the time of the accident, by the customary number of working hours constituting an ordinary day in the character of work involved; (ii) the straight-time weekly rate shall be found by multiplying the daily money rate by the number of days and half days that the employee usually and regularly worked, or was expected to work, but 40 hours shall constitute the minimum hours for computing the wage of a full-time hourly employee, unless the employer's regular and customary workweek is less than 40 hours, in which case, the number of hours in such employer's regular and customary workweek shall govern; (iii) the average weekly overtime of the employee shall be the total amount earned by the employee in excess of the amount of straight-time money earned by the employee during the 26 calendar weeks immediately preceding the date of the accident, or during the actual number of such weeks the employee was employed if less than 26 weeks, divided by the number of such weeks; and (iv) the average gross weekly wage of a full-time hourly employee shall be the total of the straight-time weekly rate, the average weekly overtime and the weekly average of any additional compensation.

(5) If at the time of the accident the money rate is fixed by the output of the employee, on a commission or percentage basis, on a flat-rate basis for performance of a specified job, or on any other basis where the money rate is not fixed by the week, month, year or hour, and if the employee has been employed by the employer at least one calendar week immediately preceding the date of the accident, the average gross weekly wage shall be the gross amount of money earned during the number of calendar weeks so employed, up to a maximum of 26 calendar weeks immediately preceding the date of the accident, divided by the number of weeks employed, or by 26 as the case may be, plus the average weekly value of any additional compensation and the value of the employee's average weekly overtime computed as provided in paragraph (4) of this subsection. If the employee had been in the employment of the employer less than one calendar week immediately preceding the accident, the average gross weekly wage shall be determined by the administrative law judge based upon all of the evidence and circumstances, including the usual wage for similar services paid by the same employer, or if the employer has no employees performing similar services, the usual wage paid for similar services by other employers. The average gross weekly wage so determined shall not exceed the actual average gross weekly wage the employee was

reasonably expected to earn in the employee's specific employment, including the average weekly value of any additional compensation and the value of the employee's average weekly overtime computed as provided in paragraph (4) of this subsection. In making any computations under this paragraph (5), workweeks during which the employee was on vacation, leave of absence, sick leave or was absent the entire workweek because of illness or injury shall not be considered.

(6) (A) The average gross weekly wage of a person serving on a volunteer basis as a duly authorized law enforcement officer, an ambulance attendant *emergency medical technician*, mobile intensive care technician, or firefighter, ~~or any other volunteer~~ under the workers compensation act, who receives no wages for such services, or who receives wages which are substantially less than the usual wages paid for such services by comparable employers to employees who are not volunteers, shall be computed on the basis of *the state average weekly wage* ~~the usual wages paid by the employer for such services to employees who are not volunteers, or, if the employer has no employees performing such services for wages who are not volunteers, the average gross weekly wage shall be computed on the basis of the usual wages paid for such services by comparable employers to employees who are not volunteers.~~ Volunteer employment shall not be presumed to be full-time employment.

(B) The average gross weekly wage of any person performing community service work shall be deemed to be \$37.50.

(C) The average gross weekly wage of a volunteer member of the Kansas department of civil air patrol officially engaged in the performance of functions specified in K.S.A. 1993 Supp. 48-3302 and amendments thereto shall be deemed to be \$476.38. Whenever the rates of compensation of the pay plan for persons in the classified service under the Kansas civil service act are increased for payroll periods chargeable to fiscal years commencing after June 30, 1988, the average gross weekly wage which is deemed to be the average gross weekly wage under the provisions of this subsection for a volunteer member of the Kansas department of civil air patrol shall be increased by an amount, adjusted to the nearest dollar, computed by multiplying the average of the percentage increases in all monthly steps of such pay plan by the average gross weekly wage deemed to be the average gross weekly wage of such volunteer member under the provisions of this subsection prior to the effective date of such increase in the rates of compensation of the pay plan for persons in the classified service under the Kansas civil service act.

(D) *The average weekly wage of any other volunteer under the workers compensation act, who receives no wages for such services, or who receives wages which are substantially less than the usual wages paid for such services by comparable employers to employees who are not volunteers, shall be computed on the basis of the usual wages paid by the employer for such services to employees who are not volunteers, or, if the employer has no employees performing such services for wages who are not volunteers, the average gross weekly wage shall be computed on the basis of the usual wages paid for such services by comparable employers to employees who are not volunteers. Volunteer employment is not presumed to be full time employment.*

(7) The average gross weekly wage of an employee who sustains an injury by accident arising out of and in the course of multiple employment, in which such employee performs the same or a very similar type of work on a part-time basis for each of two or more employers, shall be the total average gross weekly wage of such employee paid by all the employers in such multiple employment. The total average gross weekly wage of such employee shall be the total amount of the individual average gross weekly wage determinations under this section for each individual employment of such multiple employment.



(8) In determining an employee's average gross weekly wage with respect to the employer against whom claim for compensation is made, no money or additional compensation paid to or received by the employee from such employer, or from any source other than from such employer, shall be included as wages, except as provided in this section. No wages, other compensation or benefits of any type, except as provided in this section, shall be considered or included in determining the employee's average gross weekly wage.

(c) In any case, the average yearly wage shall be found by multiplying the average gross weekly wage, as determined in subsection (b), by 52.

(d) The state's average weekly wage for any year shall be the average weekly wage paid to employees in insured work subject to Kansas employment security law as determined annually by the secretary of human resources as provided in K.S.A. 44-704 and amendments thereto.

(e) Members of a labor union or other association who 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.

**44-556. Judicial review of actions of the board; procedure; payment of compensation pending administrative and judicial review; application of 1993 amendments; reimbursement or credit for amounts paid under certain circumstances.** (a) Any action of the board pursuant to the workers compensation act, other than the disposition of appeals of preliminary orders or awards under K.S.A. 44-534a and amendments thereto, 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. When an appeal has been filed pursuant to this section, an appellee may file a cross appeal within 20 days after the date upon which the appellee was served with notice of the appeal. Such review shall be upon questions of law.

(b) Commencement of an action for review by the court of appeals shall not stay the payment of compensation due for the ten-week period next preceding the board's decision and for the period of time after the board's decision and prior to the decision of the court of appeals on review.

(c) If review is sought on any order entered under the workers compensation act prior to October 1, 1993, such review shall be in accordance with the provisions of K.S.A. 44-551 and this section, and any other applicable procedural provisions of the workers compensation act, as all such provisions existed prior to amendment by this act on July 1, 1993.

(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 under this section and the amount of compensation awarded by the 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 under this section and the amount of compensation awarded for such benefits by the 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 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 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 under this section, and pursuant to K.S.A. 44-534a or K.S.A. 44-551, and amendments thereto, 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 administrative law judge or board, is held not liable by the final decision on review by either the board or an appellate court 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. 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).

(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~~ 44-510k and amendments thereto and may have a hearing in accordance with that statute to enforce the provisions of this subsection.

**44-510i. Medical benefits; appointment of medical administrator; maximum medical fee schedule; advisory panel.** (a) The director shall appoint, subject to the approval of the secretary, a specialist in health services delivery, who shall be referred to as the medical administrator. The medical administrator shall be a person licensed to practice medicine and surgery in this state and shall be in the unclassified service under the Kansas civil service act.

(b) The medical administrator, subject to the direction of the director, shall have the duty of overseeing the providing of health care services to employees in accordance with the provisions of the workers compensation act, including but not limited to:

(1) Preparing, with the assistance of the advisory panel, the fee schedule for health care services as set forth in this section;

(2) developing, with the assistance of the advisory panel, the utilization review program for health care services as set forth in this section;

(3) developing a system for collecting and analyzing data on expenditures for health care services by each type of provider under the workers compensation act; and

(4) carrying out such other duties as may be delegated or directed by the director or secretary.

(c) The director shall prepare and adopt rules and regulations which establish a schedule of maximum fees for medical, surgical, hospital, dental, nursing, vocational rehabilitation or any other treatment or services provided or ordered by health care providers and rendered to employees under the workers compensation act and procedures for appeals and review of disputed charges or services rendered by health care providers under this section;

(1) The schedule of maximum fees shall be reasonable, shall promote health care cost containment and efficiency with respect to the workers compensation health care delivery system, and shall be sufficient to ensure availability of such reasonably necessary treatment, care and attendance to each injured employee to cure and relieve the employee from the effects of the injury. The schedule shall include provisions and review procedures for exceptional cases involving extraordinary medical procedures or circumstances and shall include costs and charges for medical records and testimony.

(2) In every case, all fees, transportation costs, charges under this section and all costs and charges for medical records and testimony shall be subject to approval by the director and shall be limited to such as are fair, reasonable and necessary. The schedule of maximum fees shall be revised as necessary at least every two years by the director to assure that the schedule is current, reasonable and fair.

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

(d) There is hereby created an advisory panel to assist the director in establishing a schedule of maximum fees as required by this section. The panel shall consist of the commissioner of insurance and seven members appointed as follows: One person shall be appointed by the Kansas medical society; one member shall be appointed by the Kansas association of osteopathic medicine; one member shall be appointed by the Kansas hospital association; one member shall be appointed by the Kansas chiropractic association; and three members shall be appointed by the secretary. Of the members appointed by the secretary, one

shall be a representative of employers recommended to the secretary by the Kansas chamber of commerce and industry; one shall be a representative of employees recommended to the secretary by the Kansas AFL-CIO; and one shall be a representative of providers of vocational rehabilitation services pursuant to K.S.A. 44-510g and amendments thereto. Each appointed member shall be appointed for a term of office of two years which shall commence on July 1 of the year of appointment. Members of the advisory panel attending meetings of the advisory panel, or attending a subcommittee of the advisory panel authorized by the advisory panel, shall be paid subsistence allowances, mileage and other expenses as provided in K.S.A. 75-3223 and amendments thereto.

(e) All fees and other charges paid for such treatment, care and attendance, including treatment, care and attendance provided by any health care provider, hospital or other entity providing health care services, shall not exceed the amounts prescribed by the schedule of maximum fees established under this section or the amounts authorized pursuant to the provisions and review procedures prescribed by the schedule for exceptional cases. A health care provider, hospital or other entity providing health care services shall be paid either such health care provider, hospital or other entity's usual charge, *so long as reasonable*, for the treatment, care and attendance or the maximum fees as set forth in the schedule, whichever is less. In reviewing and approving the schedule of maximum fees, the director shall consider the following:

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

(2) the impact upon cost to employers for providing a level of fees for treatment, care and attendance which will ensure the availability of treatment, care and attendance required for injured employees;

(3) the potential change in workers compensation insurance premiums or costs attributable to the level of treatment, care and attendance provided; and

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

**44-551. Assistant directors, administrative law judges and special local administrative law judges; powers and duties, compensation, fees and expenses; review of findings and awards by board; delayed order on board review, effect; payment of medical compensation pending review.** (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.

(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, papers, documents and records to the same extent as is conferred on the district courts of this state, and may conduct an investigation, inquiry or hearing on all matters before the administrative law judges. All final orders, awards, modifications of awards, or preliminary awards under K.S.A. 44-534a and amendments thereto made by an administrative law judge shall be subject to review by the board upon written request of any interested party within 10 days. Intermediate Saturdays, Sundays and legal holidays shall be excluded in the time computation. Review by the board shall be a prerequisite to judicial review as provided for in K.S.A. 44-556 and amendments thereto. On any such review, the board shall have authority to grant or refuse compensation, or to increase or diminish any award of compensation or to remand any matter to the administrative law judge for further proceedings. The orders of the board under this subsection shall be issued within 30 days from the date arguments were presented by the parties.

(2) (A) If an administrative law judge has entered a preliminary award under K.S.A. 44-534a and amendments thereto, a review by the board shall not be conducted under this section unless it is alleged that the administrative law judge exceeded the administrative law judge's jurisdiction in granting or denying the relief requested at the preliminary hearing. Such an appeal from a preliminary award may be heard and decided by a single member of the board. Members of the board shall hear such preliminary appeals on a rotating basis and the individual board member who decides the appeal shall sign each such decision. The orders of the board under this subsection shall be issued within 30 days from the date arguments were presented by the parties.

(B) If an order on review is not issued by the board within the applicable time period prescribed by subsection (b)(1), medical compensation and any disability compensation as provided in the award of the administrative law judge shall be paid commencing with the first day after such time period and shall continue to be paid until the order of the board is issued, except that no payments shall be made under this provision for any period before the first day after such time period. Nothing in this section shall be construed to limit or restrict any other remedies available to any party to a claim under any other statute.

(C) In any case in which the final award of an administrative law judge is appealed to the board for review under this section and in which the compensability is not an issue to be decided on review by the board, medical compensation shall be payable in accordance with the award of the administrative law judge and shall not be stayed pending such review. The employee may proceed under K.S.A. ~~44-534a~~ 44-510k and amendments thereto and may have a hearing in accordance with that statute to enforce the provisions of this subsection.

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

(d) In case of emergency the director may appoint special local administrative law judges and

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

(e) All special local administrative law judge's fees and expenses, with the exception of settlement hearings, shall be paid from the workers compensation administration fee fund, as provided in K.S.A. 74- 712 and amendments thereto. Where there are no available funds or where the special local administrative law judge conducted a settlement hearing, the fees shall be taxed as costs in each case heard by such special local administrative law judge and when collected shall be paid directly to such special local administrative law judge by the party charged with the payment of the same.

(f) Except as provided for judicial review under K.S.A. 44-556 and amendments thereto, the decisions and awards of the board shall be final.