

MINUTES OF THE HOUSE COMMERCE & ECONOMIC DEVELOPMENT COMMITTEE

The meeting was called to order by Chairman Anthony Brown at 1:30 p.m., on February 11, 2011, in Room 785 of Docking State Office Building.

All members were present.

Committee staff present:

Jason Long, Office of the Revisor of Statutes
Ken Wilke, Office of the Revisor of Statutes
Reed Holwegner, Kansas Legislative Research Department
Raney Gilliland, Kansas Legislative Research Department
Joyce Bishop, Committee Assistant

Conferees appearing before the Committee:

None

Others attending:

See attached list.

Chairperson Brown opened Committee discussion and action on **HB 2134, Amending the workers compensation act.**

Representative Slattery moved, seconded by Representative Suellentrop to pass HB 2134 favorably from committee.

Jason Long gave the explanation of the first proposed bill amendment (Attachment 1).

Representative Sullentrop moved, seconded by Representative Peck, a substitute motion to amend HB 2134 with Attachment 1.

Representative Slattery, seconded by Representative Ruiz, moved to divide the question. The motion passed on a voice vote.

Chairperson Brown said the first vote should be to adopt the whole amendment in (Attachment 1) except for pages 2, 3, 11, 38, 44, and section 26, Subsection E, and page 12, line 1.

For the whole amendment excluding the pages specified above, the motion passed on a voice vote.

For the amendment contained on page 2, the motion passed on a voice vote.

For the amendment contained on page 3 the motion passed on a voice vote.

For the amendment contained on page 11, the motion passed on a voice vote.

For the amendment contained on page 38, the motion passed on a voice vote.

For the amendment contained on page 44, the motion passed on a voice vote.

For the amendment contained in subsection 26 (e), the motion passed on a voice vote.

For the amendment contained on page 12, line 1, the motion passed on a voice vote.

Representative Slattery moved, seconded by Representative Ruiz, that HB 2134 be further amended by deleting the text found at Section 4 (a)(4) in Attachment 1 and inserting the following:

(4) “the employee's knowing or reckless violation of their employer's workplace safety rules or regulations; or”.

The motion passed on a voice vote.

CONTINUATION SHEET

The minutes of the Commerce & Economic Development Committee at 1:30 p.m. on February 11, 2011, in Room 785 or Docking State Office Building.

Representative Slattery moved, seconded by Representative Ruiz, that **HB 2134** be further amended by deleting the text found on page 3 of Attachment 1, paragraph (F). The motion failed on a voice vote. Representative Slattery asked to divide the vote. The motion failed.

Representative Slattery moved, seconded by Representative Frownfelter, that **HB 2134** be further amended on page 11 of Attachment 1, in paragraph (C) (1), that after the text "The employee was directly ordered" insert the words "or coerced". The motion carried on a voice vote

Representative Slattery moved, seconded by Representative Ruiz, that **HB 2134** be further amended on page 38 of Attachment 1, in subsection (a) by inserting the word "specifically" between the words "employee" and "seeks". The motion passed on a voice vote.

Representative Slattery moved, seconded by Representative Frownfelter, that **HB 2134** be further amended by deleting subsection (e) in Section 26 of Attachment 1. The motion failed on a voice vote. Representative Slattery asked to divide the vote. The motion failed. Representative Schwab requested his No vote be recorded.

Jason Long distributed and explained the next balloon amendment (Attachment 2).

Representative Suellentrop moved, seconded by Representative Garber, to amend **HB 2134** with the amendment contained in Attachment 2. The motion carried on a voice vote.

Representative Tyson moved, seconded by Representative Slattery, that **HB 2134** be further amended by deleting the chart for test cutoff levels for hair follicle found in Attachment 2. The motion carried on a voice vote.

Representative Schwab moved, seconded by Representative Ruiz, that the Committee recommend to the House that Substitute for **HB 2134** be passed. The motion carried on a voice vote.

The next meeting is scheduled for February 14, 2011.

The meeting was adjourned at 4:00 p.m.

HOUSE COMMERCE & ECONOMIC DEVELOPMENT COMMITTEE

1:30pm,

Room 785, Docking State Office Building

GUEST LIST

DATE: February 11, 2011

NAME	REPRESENTING
Kathie Sparks	KDOL
Carol East	KDOL
ANNE HAUGHT	KDOL
Janet Stubbs	KBIWCF
Roy T. Artman	KBIWCF
Kevin McFarland	Ks. Homes for the Aging
ILVIST Lellin	ILD
TED HENRY	C.S.
Kelly Navinsky-Wenzel	Kearney & Assoc
Sandra Singer	KAPCIC
Carol Wilman	Gov. Ethics
John Ostrowski	KS AFL-CIO
Jeff Cooper	KSAJ
Sweet Paradise	HOC
David Shuman	KASB
Ciz Marbenzer Clark	KASB
RS Wilson	KOSE
John Polzella	KCCWS
John A. Donley	KS Lusk. Ass'n
Ron Secker	RAFA/KORA

HOUSE BILL No. 2134

By Committee on Commerce and Economic Development

1-31

HB 2134 Ballon Amendments

Prepared by: Jason Long

February 11, 2011

HOUSE COMMERCE & ECONOMIC
DEVELOPMENT
DATE: 02/11/2011
ATTACHMENT: 1-1

1 AN ACT concerning workers compensation; amending K.S.A. 44-503a,
2 44-510c, 44-510d, 44-510e, 44-510f, 44-515, 44-516, 44-520, 44-525,
3 44-528, 44-531, 44-534a, 44-536 and 44-5a01 and K.S.A. 2010 Supp.
4 44-501, 44-508, 44-510b, 44-510h, 44-510k, 44-511, and 44-523 and
5 repealing the existing sections; also repealing K.S.A. 44-510a and 44-
6 520a.

44-532a,

and 44-552

and K.S.A. 2010 Supp. 44-596

7
8 *Be it enacted by the Legislature of the State of Kansas:*

9 *New Section 1. (a) It is the intent of the legislature that the*
10 *workers compensation act shall be liberally construed only for the*
11 *purpose of bringing employers and employees within the provisions of*
12 *the act. The provisions of the workers compensation act shall be applied*
13 *impartially to both employers and employees in cases arising thereunder.*

14 *(b) If in any employment to which the workers compensation act*
15 *applies, an employee suffers personal injury by accident, repetitive*
16 *trauma or occupational disease arising out of and in the course of*
17 *employment, the employer shall be liable to pay compensation to the*
18 *employee in accordance with the provisions of the workers compensation*
19 *act.*

and subject to

20 *(c) The burden of proof shall be on the claimant to establish the*
21 *claimant's right to an award of compensation and to prove the various*
22 *conditions on which the claimant's right depends. In determining whether*
23 *the claimant has satisfied this burden of proof, the trier of fact shall*
24 *consider the whole record.*

trier

25 *(d) Except as provided in the workers compensation act, no*
26 *employer, or other employee of such employer, shall be liable for any*
27 *injury, whether by accident, repetitive trauma, or occupational disease,*
28 *for which compensation is recoverable under the workers compensation*
29 *act nor shall an employer be liable to any third party for any injury or*
30 *death of an employee which was caused under circumstances creating a*
31 *legal liability against a third party and for which workers compensation*
32 *is payable by such employer.*

33 *Sec. 2. K.S.A. 2010 Supp. 44-501 is hereby amended to read as*
34 *follows: 44-501. (a) If in any employment to which the workers*
35 *compensation act applies, personal injury by accident arising out of and*

1 in the course of employment is caused to an employee, the employer shall
2 be liable to pay compensation to the employee in accordance with the
3 provisions of the workers compensation act. In proceedings under the
4 workers compensation act, the burden of proof shall be on the claimant to
5 establish the claimant's right to an award of compensation and to prove
6 the various conditions on which the claimant's right depends. In
7 determining whether the claimant has satisfied this burden of proof, the
8 trier of fact shall consider the whole record.

9 (b) Except as provided in the workers compensation act, no
10 employer, or other employee of such employer, shall be liable for any
11 injury for which compensation is recoverable under the workers
12 compensation act nor shall an employer be liable to any third party for
13 any injury or death of an employee which was caused under
14 circumstances creating a legal liability against a third party and for which
15 workers compensation is payable by such employer.

16 (c) The employee shall not be entitled to recover for the aggravation
17 of a preexisting condition, except to the extent that the work related
18 injury causes increased disability. Any award of compensation shall be
19 reduced by the amount of functional impairment determined to be
20 preexisting.

21 (d) (1) If the injury to the employee results from the employee's
22 deliberate intention to cause such injury; or from the employee's willful
23 failure to use a guard or protection against accident required pursuant to
24 any statute and provided for the employee, or a reasonable and proper
25 guard and protection voluntarily furnished the employee by the employer,
26 any compensation in respect to that injury shall be disallowed.

27 (2)(a) Compensation for an injury shall be disallowed if such injury
28 to the employee results from:

29 (1) The employee's deliberate intention to cause such injury;

30 (2) the employee's willful failure to use a guard or protection
31 against accident which is required pursuant to any statute and provided
32 for the employee; or

33 (3) the employee's willful failure to use a reasonable and proper
34 guard and protection voluntarily furnished the employee by the employer.

35 (b) (1) (A) The employer shall not be liable under the workers
36 compensation act where the injury, disability or death was contributed to
37 by the employee's use or consumption of alcohol or any drugs, chemicals
38 or any other compounds or substances, including, but not limited to, any
39 drugs or medications which are available to the public without a
40 prescription from a health care provider, prescription drugs or
41 medications, any form or type of narcotic drugs, marijuana, stimulants,
42 depressants or hallucinogens.

(B) In the case of drugs or medications which are available to the

or injury

(c)

; (4) the employee's willful violation of any federal, state or local law,
regulation or ordinance enacted or adopted for the protection of the employee or
public at large; or

(5) the employee's voluntarily participation in fighting or horseplay for any
reason, work related or otherwise.

(b) No compensation shall be allowed for any employee who was unlawfully
present in the United States, or who did not have the legal right or authorization
under federal law to work in the United States, as defined by 8 U.S.C. § 1324a,
except that compensation shall be allowed if the employer hired such employee
with the knowledge that such employee was unlawfully present in the United
States or did not have the legal right or authorization under federal law to work in
the United States. Nothing in this subsection shall be construed to disallow any
state or local public benefits that are required to be offered by 8 U.S.C. § 1621.

public without a prescription from a health care provider and prescription drugs or medications, compensation shall not be denied if the employee can show that such drugs or medications were being taken or used in therapeutic doses and there have been no prior incidences of the employee's impairment on the job as the result of the use of such drugs or medications within the previous 24 months.

(C) It shall be conclusively presumed that the employee was impaired due to alcohol or drugs if it is shown that, at the time of the injury, that the employee had an alcohol concentration of .04 or more, or a GCMS confirmatory test by quantitative analysis showing a concentration at or above the levels shown on the following chart for the drugs of abuse listed:

Confirmatory test cutoff levels (ng/ml)

Marijuana metabolite ¹	15
Cocaine metabolite ²	150
Opiates:	
Morphine	2000
Codeine	2000
6-Acetylmorphine ⁴	10 ng/ml
Phencyclidine	25
Amphetamines:	

Amphetamine.....500

Methamphetamine ³.....500

¹ Delta-9-tetrahydrocannabinol-9-carboxylic acid.

² Benzoylcegonine.

³ Specimen must also contain amphetamine at a concentration greater than or equal to 200 ng/ml.

⁴ Test for 6-AM when morphine concentration exceeds 2,000 ng/ml.

(D) If it is shown that the employee was impaired pursuant to subsection (b)(1)(C) at the time of the injury, there shall be a rebuttable presumption that the accident, injury, disability or death was contributed to by such impairment. The employee may overcome the presumption of contribution by clear and convincing evidence.

(E) An employee's refusal to submit to a chemical test shall not be admissible evidence to prove impairment unless there was probable cause to believe that the employee used, possessed or was impaired by a drug or alcohol while working at the request of the employer shall result in the forfeiture of benefits under the workers compensation act if the employer had sufficient cause to suspect the use of alcohol or drugs by the claimant or if the employer's policy clearly authorizes post-injury testing.

(2) The results of a chemical test shall not be admissible evidence to prove impairment unless the following conditions were met if the employer establishes that the testing was done under any of the following

(F) When an injured employee seeks medical care following an accident or injury without sufficient notice to the employer such that the employer can timely request a chemical test, compensation under the workers compensation act shall be disallowed unless the employee demonstrates just cause for failing to provide timely notification to the employer.

circumstances:

(A) As a result of an employer mandated drug testing policy, in place in writing prior to the date of accident or injury, requiring any worker to submit to testing for drugs or alcohol;

(B) during an autopsy or in the normal course of medical treatment for reasons related to the health and welfare of the injured worker and not at the direction of the employer;

(C) the worker, prior to the date and time of the accident or injury, gave written consent to the employer that the worker would voluntarily submit to a chemical test for drugs or alcohol following any accident or injury;

(D) the worker voluntarily agrees to submit to a chemical test for drugs or alcohol following any accident or injury; or

(E) as a result of federal or state law or a federal or state rule or regulation having the force and effect of law requiring a post-injury testing program and such required program was properly implemented at the time of testing.

(3) Notwithstanding subsection (b)(2), the results of a chemical test performed on a sample collected by an employer shall not be admissible evidence to prove impairment unless the following conditions are met:

(A) There was probable cause to believe that the employee used, had possession of, or was impaired by the drug or alcohol while working;

(B) the test sample was collected at a time contemporaneous with the events establishing probable cause within a reasonable time following the accident or injury;

(C)(B) the collecting and labeling of the test sample was performed by or under the supervision of a licensed health care professional;

(D)(C) the test was performed by a laboratory approved by the United States department of health and human services or licensed by the department of health and environment, except that a blood sample may be tested for alcohol content by a laboratory commonly used for that purpose by state law enforcement agencies;

(E)(D) the test was confirmed by gas chromatography-mass spectroscopy or other comparably reliable analytical method, except that no such confirmation is required for a blood alcohol sample; and

(F)(E) the foundation evidence must establish, beyond a reasonable doubt, that the test results were from the sample taken from the employee; and

(F) a split sample sufficient for testing shall be retained

(3) For purposes of satisfying the probable cause requirement of subsection (d)(2)(A) of this section, the employer shall be deemed to have met their burden of proof on this issue by establishing any of the

by the employer for use in the event of a positive test result. The employee may challenge a positive test result within 48 hours of notification of the positive test result and request that another test be performed upon the split sample retained by the employer for such purposes. Any test performed on a split sample pursuant to the employee's requested may be performed by the employer utilizing a widely accepted and available commercial chemical testing product or system, including but not limited to, blood, urine, saliva or hair follicle testing procedures and shall be performed as provided in paragraph (D). The results of the second test shall be admissible upon proof that the split sample was in fact retained from the original sample taken from the employee within a reasonable time following the accident or injury. The employer shall be responsible for the cost of the second test unless the test result is also positive.

1 following circumstances:

2 (A) ~~The testing was done as a result of an employer mandated drug~~
 3 ~~testing policy, in place in writing prior to the date of accident, requiring~~
 4 ~~any worker to submit to testing for drugs or alcohol if they are involved~~
 5 ~~in an accident which requires medical attention;~~

6 (B) ~~the testing was done in the normal course of medical treatment~~
 7 ~~for reasons related to the health and welfare of the injured worker and~~
 8 ~~was not at the direction of the employer; however, the request for GCMS~~
 9 ~~testing for purposes of confirmation, required by subsection (d)(2)(E) of~~
 10 ~~this section, may have been at the employer's request;~~

11 (C) ~~the worker, prior to the date and time of the accident, gave~~
 12 ~~written consent to the employer that the worker would voluntarily submit~~
 13 ~~to a chemical test for drugs or alcohol following any accident requiring~~
 14 ~~the worker to obtain medical treatment for the injuries suffered. If after~~
 15 ~~suffering an accident requiring medical treatment, the worker refuses to~~
 16 ~~submit to a chemical test for drugs or alcohol, this refusal shall be~~
 17 ~~considered evidence of impairment, however, there must be evidence that~~
 18 ~~the presumed impairment contributed to the accident as required by this~~
 19 ~~section; or~~

20 (D) ~~the testing was done as a result of federal or state law or a~~
 21 ~~federal or state rule or regulation having the force and effect of law~~
 22 ~~requiring a post accident testing program and such required program was~~
 23 ~~properly implemented at the time of testing.~~

24 (e)(c) Compensation shall not be paid in case of coronary or
 25 coronary artery disease or cerebrovascular injury unless it is shown that
 26 the exertion of the work necessary to precipitate the disability was more
 27 than the employee's usual work in the course of the employee's regular
 28 employment.

(d)

29 (f)(d) Except as provided in the workers compensation act, no
 30 construction design professional who is retained to perform professional
 31 services on a construction project or any employee of a construction
 32 design professional who is assisting or representing the construction
 33 design professional in the performance of professional services on the site
 34 of the construction project, shall be liable for any injury resulting from
 35 the employer's failure to comply with safety standards on the construction
 36 project for which compensation is recoverable under the workers
 37 compensation act, unless responsibility for safety practices is specifically
 38 assumed by contract. The immunity provided by this subsection to any
 39 construction design professional shall not apply to the negligent
 40 preparation of design plans or specifications.

(e)

41 (g) ~~It is the intent of the legislature that the workers compensation~~
 42 ~~act shall be liberally construed for the purpose of bringing employers and~~
 43 ~~employees within the provisions of the act to provide the protections of~~

~~the workers compensation act to both. The provisions of the workers compensation act shall be applied impartially to both employers and employees in cases arising thereunder.~~

~~(h)(e)~~ An award of compensation for permanent partial impairment, work disability, or permanent total disability shall be reduced by the amount of functional impairment determined to be preexisting. Any such reduction shall not apply to temporary total disability, nor shall it apply to compensation for medical treatment.

(1) Where workers compensation benefits have previously been awarded through settlement or judicial or administrative determination in Kansas, the percentage basis of the prior settlement or award shall conclusively establish the amount of functional impairment determined to be preexisting. Where workers compensation benefits have not previously been awarded through settlement or judicial or administrative determination in Kansas, the amount of preexisting functional impairment shall be established by competent evidence.

(2) In all cases, the applicable reduction shall be calculated as follows:

(A) If the preexisting impairment is the result of injury sustained while working for the employer against whom workers compensation benefits are currently being sought, any award of compensation shall be reduced by the current dollar value attributable under the workers compensation act to the percentage of functional impairment determined to be preexisting. The "current dollar value" shall be calculated by multiplying the percentage of preexisting impairment by the compensation rate in effect on the date of the accident or injury against which the reduction will be applied.

(B) In all other cases, the employer against whom benefits are currently being sought shall be entitled to a credit for the percentage of preexisting impairment.

~~(d)~~ If the employee is receiving receives, whether periodically or by lump sum, retirement benefits under the federal social security act or retirement benefits from any other retirement system, program, policy or plan which is provided by the employer against which the claim is being made, any compensation benefit payments which the employee is eligible to receive under the workers compensation act for such claim shall be reduced by the weekly equivalent amount of the total amount of all such retirement benefits, less any portion of any such retirement benefit, other than retirement benefits under the federal social security act, that is attributable to payments or contributions made by the employee, but in no event shall the workers compensation benefit be less than the workers compensation benefit payable for the employee's percentage of functional impairment. Where the employee elects to take retirement benefits in a

(h)

1 *lump sum, the lump sum payment shall be amortized at the rate of 4% per*
2 *year over the employee's life expectancy to determine the weekly*
3 *equivalent value of the benefits.*

4 Sec. 3. K.S.A. 44-503a is hereby amended to read as follows: 44-
5 503a. Whenever an employee is engaged in multiple employment, in
6 which such employee performs the same or a very similar type of work
7 on a part-time basis for each of two ~~(2)~~ or more employers, and such
8 employee sustains an injury ~~by accident~~ which arose out of and in the
9 course of the multiple employment with all such employers, and which
10 did not clearly arise out of and in the course of employment with any
11 particular employer, all such employers shall be liable to pay a
12 proportionate amount of the compensation payable under the workmen's
13 compensation act as follows: Each such employer shall be liable for such
14 proportion of the total amount of compensation which is required to be
15 paid by all such employers, as the average ~~gross~~ weekly wages paid to the
16 employee by such employer, bears to the total average ~~gross~~ weekly
17 wages paid to the employee by all such employers, determined as
18 provided in subsection (b) ~~(7)~~(3) of K.S.A. 44-511, ~~as amended and~~
19 ~~amendments thereto~~.

20 Sec. 4. K.S.A. 2010 Supp. 44-508 is hereby amended to read as
21 follows: 44-508. As used in the workers compensation act:

22 (a) "Employer" includes: (1) Any person or body of persons,
23 corporate or unincorporate, and the legal representative of a deceased
24 employer or the receiver or trustee of a person, corporation, association or
25 partnership; (2) the state or any department, agency or authority of the
26 state, any city, county, school district or other political subdivision or
27 municipality or public corporation and any instrumentality thereof; and
28 (3) for the purposes of community service work, the entity for which the
29 community service work is being performed and the governmental
30 agency which assigned the community service work, if any, if either such
31 entity or such governmental agency has filed a written statement of
32 election with the director to accept the provisions under the workers
33 compensation act for persons performing community service work and in
34 such case such entity and such governmental agency shall be deemed to
35 be the joint employer of the person performing the community service
36 work and both shall have the rights, liabilities and immunities provided
37 under the workers compensation act for an employer with regard to the
38 community service work, except that the liability for providing benefits
39 shall be imposed only on the party which filed such election with the
40 director, or on both if both parties have filed such election with the
41 director; for purposes of community service work, "governmental
42 agency" shall not include any court or any officer or employee thereof
43 and any case where there is deemed to be a "joint employer" shall not be

1 construed to be a case of dual or multiple employment.

2 (b) "Workman" or "employee" or "worker" means any person who
3 has entered into the employment of or works under any contract of
4 service or apprenticeship with an employer. Such terms shall include but
5 not be limited to: Executive officers of corporations; professional
6 athletes; persons serving on a volunteer basis as duly authorized law
7 enforcement officers, attendants, as defined in subsection (d) of K.S.A.
8 65-6112, and amendments thereto, drivers of ambulances as defined in
9 subsection (b) of K.S.A. 65-6112, and amendments thereto, firefighters,
10 but only to the extent and during such periods as they are so serving in
11 such capacities; persons employed by educational, religious and
12 charitable organizations, but only to the extent and during the periods that
13 they are paid wages by such organizations; persons in the service of the
14 state, or any department, agency or authority of the state, any city, school
15 district, or other political subdivision or municipality or public
16 corporation and any instrumentality thereof, under any contract of
17 service, express or implied, and every official or officer thereof, whether
18 elected or appointed, while performing official duties; persons in the
19 service of the state as volunteer members of the Kansas department of
20 civil air patrol, but only to the extent and during such periods as they are
21 officially engaged in the performance of functions specified in K.S.A. 48-
22 3302, and amendments thereto; volunteers in any employment, if the
23 employer has filed an election to extend coverage to such volunteers;
24 minors, whether such minors are legally or illegally employed; and
25 persons performing community service work, but only to the extent and
26 during such periods as they are performing community service work and
27 if an election has been filed an election to extend coverage to such
28 persons. Any reference to an employee who has been injured shall, where
29 the employee is dead, include a reference to the employee's dependents,
30 to the employee's legal representatives, or, if the employee is a minor or
31 an incapacitated person, to the employee's guardian or conservator.
32 Unless there is a valid election in effect which has been filed as provided
33 in K.S.A. 44-542a, and amendments thereto, such terms shall not include
34 individual employers, limited liability company members, partners or
35 self-employed persons.

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

39 (2) "Members of a family" means only surviving legal spouse and
40 children; or if no surviving legal spouse or children, then parents or
41 grandparents; or if no parents or grandparents, then grandchildren; or if
42 no grandchildren, then brothers and sisters. In the meaning of this section,
parents include stepparents, children include stepchildren, grandchildren

1 include stepgrandchildren, brothers and sisters include stepbrothers and
2 stepsisters, and children and parents include that relation by legal
3 adoption. In the meaning of this section, a surviving spouse shall not be
4 regarded as a dependent of a deceased employee or as a member of the
5 family, if the surviving spouse shall have for more than six months
6 willfully or voluntarily deserted or abandoned the employee prior to the
7 date of the employee's death.

8 (3) "Wholly dependent child or children" means:

9 (A) A birth child or adopted child of the employee except such a
10 child whose relationship to the employee has been severed by adoption;

11 (B) a stepchild of the employee who lives in the employee's
12 household;

13 (C) any other child who is actually dependent in whole or in part on
14 the employee and who is related to the employee by marriage or
15 consanguinity; or

16 (D) any child as defined in ~~subsections~~ subsection (c)(3)(A), (3)(B)
17 or (3)(C) who is less than 23 years of age and who is not physically or
18 mentally capable of earning wages in any type of substantial and gainful
19 employment or who is a full-time student attending an accredited
20 institution of higher education or vocational education.

21 (d) "Accident" means an undesigned, sudden and unexpected
22 traumatic event or events, usually of an afflictive or unfortunate nature
23 and often, but not necessarily, accompanied by a manifestation of force.
24 ~~The elements of an accident, as stated herein, are not to be construed in a~~
25 ~~strict and literal sense, but in a manner designed to effectuate the purpose~~
26 ~~of the workers compensation act that the employer bear the expense of~~
27 ~~accidental injury to a worker caused by the employment. In cases where~~
28 ~~the accident occurs as a result of a series of events, repetitive use,~~
29 ~~cumulative traumas or microtraumas, the date of accident shall be the~~
30 ~~date the authorized physician takes the employee off work due to the~~
31 ~~condition or restricts the employee from performing the work which is~~
32 ~~the cause of the condition. In the event the worker is not taken off work~~
33 ~~or restricted as above described, then the date of injury shall be the~~
34 ~~earliest of the following dates: (1) The date upon which the employee~~
35 ~~gives written notice to the employer of the injury; or (2) the date the~~
36 ~~condition is diagnosed as work related, provided such fact is~~
37 ~~communicated in writing to the injured worker. In cases where none of~~
38 ~~the above criteria are met, then the date of accident shall be determined~~
39 ~~by the administrative law judge based on all the evidence and~~
40 ~~circumstances; and in no event shall the date of accident be the date of, or~~
41 ~~the day before the regular hearing. Nothing in this subsection shall be~~
42 ~~construed to preclude a worker's right to make a claim for aggravation of~~
43 ~~injuries under the workers compensation act. An accident shall be~~

identifiable by time and place of occurrence, at the time produce symptoms of an injury, and occur during a single work shift. The accident must be the prevailing factor in causing the injury. "Accident" shall in no case be construed to include repetitive trauma in any form.

(e) "Repetitive trauma" refers to cases where an injury occurs as a result of repetitive use, cumulative traumas or microtraumas. The repetitive nature of the injury must be demonstrated by diagnostic or clinical tests. The repetitive trauma must be the prevailing factor in causing the injury. "Repetitive trauma" shall in no case be construed to include occupational disease, as defined in K.S.A. 44-5a01, and amendments thereto.

In the case of injury by repetitive trauma, the date of injury shall be the earliest of:

(1) The date the employee, while employed for the employer against whom benefits are sought, is taken off work by a physician due to the diagnosed repetitive trauma;

(2) the date the employee, while employed for the employer against whom benefits are sought, is placed on modified or restricted duty by a physician due to the diagnosed repetitive trauma;

(3) the date the employee, while employed for the employer against whom benefits are sought, is advised by a physician that the condition is work-related; or

(4) the last day worked, if the employee no longer works for the employer against whom benefits are sought.

In no case shall the date of accident be later than the last date worked.

(e)(f) (1) "Personal injury" and "injury" mean any lesion or change in the physical structure of the body, causing damage or harm thereto, so that it gives way under the stress of the worker's usual labor. It is not essential that such lesion or change be of such character as to present external or visible signs of its existence. An injury shall not be deemed to have been directly caused by the employment where it is shown that the employee suffers disability as a result of the natural aging process or by the normal activities of day to day living. Personal injury or injury may occur only by accident, repetitive trauma, or occupational disease as those terms are defined.

(2) An injury is compensable only if it "arises out of and in the course of employment." An injury is not compensable because work was a triggering or precipitating factor. An injury is not compensable solely because it aggravates, accelerates or exacerbates a preexisting condition or renders a preexisting condition symptomatic.

(A) An injury by repetitive trauma shall be deemed to arise out of employment only if:

(i) The employment exposed the worker to an increased risk or hazard which the worker would not have been exposed in normal non-employment life;

(ii) the increased risk or hazard to which the employment exposed the worker is the prevailing factor in causing the repetitive trauma; and

(iii) the repetitive trauma is the prevailing factor in causing both the medical condition and resulting disability or impairment.

(B) An injury by accident shall be deemed to arise out of employment if:

(i) There is a causal connection between the conditions under which the work is required to be performed and the resulting accident; and
(ii) the accident is the prevailing factor causing the injury, medical condition, and resulting disability or impairment.

(3) (A) The words "arising out of and in the course of employment" as used in the workers compensation act shall not be construed to include:

(i) Injury which occurred as a result of the natural aging process or by the normal activities of day-to-day living;

(ii) accident or injury which arose out of a neutral risk with no particular employment or personal character;

(iii) accident or injury which arose out of a risk personal to the worker; or

(iv) accident or injury which arose either directly or indirectly from idiopathic causes.

(B) The words "arising out of and in the course of employment" as used in the workers compensation act shall not be construed to include injuries to the employee occurring while the employee is on the way to assume the duties of employment or after leaving such duties, the proximate cause of which injury is not the employer's negligence. An employee shall not be construed as being on the way to assume the duties of employment or having left such duties at a time when the worker is on the premises of the employer or on the only available route to or from work which is a route involving a special risk or hazard and which is a route not used by the public except in dealings with the employer. An employee shall not be construed as being on the way to assume the duties of employment, if the employee is a provider of emergency services responding to an emergency.

(C) The words, "arising out of and in the course of employment" as used in the workers compensation act shall not be construed to include injuries to employees while engaged in recreational or social events under circumstances where the employee was under no duty to attend and where the injury did not result from the performance of tasks related to the employee's normal job duties or as specifically instructed to be

only

(ii) it is the natural consequence of a hazard connected to the employment;

(iii)

owned or under the exclusive control

connected with the nature of the employment that is not a risk or hazard to which the general public is exposed

the employee's participation in a recreational activity or social event is the prevailing factor of the injury, even in the event that the employer invited, promoted, sponsored or supported the recreational activity or social event, expressly or implicitly, in whole or in part. The provisions of this paragraph shall not apply when:

(1) The employee was directly ordered by the employer to participate in such recreational activity or social event;

(2) the employee was paid wages or travel expenses while participating in such recreational activity or social event; or

(3) the injury from such recreational activity or social event occurs on the employer's premises due to an unsafe condition and the employer had actual knowledge of the employee's participation in the recreational activity or social event and of the unsafe condition of the premises and failed to either curtail the recreational activity or social event and cure the unsafe condition.

performed by a person who

(g) "Prevailing factor" means the primary factor, in relation to any other factor. In determining what constitutes the "prevailing factor" in a given case, the administrative law judge shall consider all relevant evidence submitted by the parties.

as it relates to the term "factor,"

(~~g~~)(h) "Burden of proof" means the burden of a party to persuade the trier of facts by a preponderance of the credible evidence that such party's position on an issue is more probably true than not true on the basis of the whole record.

unless a higher burden is specifically required by this act

(~~h~~)(i) "Director" means the director of workers compensation as provided for in K.S.A. 75-5708, and amendments thereto.

(~~i~~)(j) "Health care provider" means any person licensed, by the proper licensing authority of this state, another state or the District of Columbia, to practice medicine and surgery, osteopathy, chiropractic, dentistry, optometry, podiatry, audiology or psychology.

(~~j~~)(k) "Secretary" means the secretary of labor.

(~~k~~)(l) "Construction design professional" means any person who is an architect, professional engineer, landscape architect or land surveyor who has been issued a license by the state board of technical professions to practice such technical profession in Kansas or any corporation organized to render professional services through the practice of one or more of such technical professions in Kansas under the professional corporation law of Kansas or any corporation issued a certificate of authorization under K.S.A. 74-7036, and amendments thereto, to practice one or more of such technical professions in Kansas.

(~~l~~)(m) "Community service work" means: (1) Public or community service performed as a result of a contract of diversion or of assignment to a community corrections program or conservation camp or suspension of sentence or as a condition of probation or in lieu of a fine imposed by court order; or (2) public or community service or other work performed as a requirement for receipt of any kind of public assistance in accordance with any program administered by the secretary of social and rehabilitation services.

(~~m~~)(n) "Utilization review" means the initial evaluation of appropriateness in terms of both the level and the quality of health care and health services provided a patient, based on accepted standards of the health care profession involved. Such evaluation is accomplished by means of a system which identifies the utilization of health care services above the usual range of utilization for such services, which is based on accepted standards of the health care profession involved, and which refers instances of possible inappropriate utilization to the director for referral to a peer review committee.

(~~n~~)(o) "Peer review" means an evaluation by a peer review

1 committee of the appropriateness, quality and cost of health care and
 2 health services provided a patient, which is based on accepted standards
 3 of the health care profession involved and which is conducted in
 4 conjunction with utilization review.

5 (e)(p) "Peer review committee" means a committee composed of
 6 health care providers licensed to practice the same health care profession
 7 as the health care provider who rendered the health care services being
 8 reviewed.

9 (p)(q) "Group-funded self-insurance plan" includes each group-
 10 funded workers compensation pool, which is authorized to operate in this
 11 state under K.S.A. 44-581 through 44-592, and amendments thereto, each
 12 municipal group-funded pool under the Kansas municipal group-funded
 13 pool act which is covering liabilities under the workers compensation act,
 14 and any other similar group-funded or pooled plan or arrangement that
 15 provides coverage for employer liabilities under the workers
 16 compensation act and is authorized by law.

17 (q)(r) On and after the effective date of this act, "workers
 18 compensation board" or "board" means the workers compensation board
 19 established under K.S.A. 44-555c, and amendments thereto.

20 (s)(s) "Usual charge" means the amount most commonly charged by
 21 health care providers for the same or similar services.

22 (s)(t) "Customary charge" means the usual rates or range of fees
 23 charged by health care providers in a given locale or area.

24 (u) "Functional impairment" means the extent, expressed as a
 25 percentage, of the loss of a portion of the total physiological capabilities
 26 of the human body as established by competent medical evidence and
 27 based on the fourth edition of the American medical association guides to
 28 the evaluation of impairment, if the impairment is contained therein.

29 (v) "Authorized treating physician" means a licensed physician or
 30 other medical provider authorized by the employer or insurance carrier
 31 or both, or appointed pursuant to court-order to provide those medical
 32 services deemed necessary to diagnose and treat an injury arising out of
 33 and in the course of employment.

34 Sec. 5. K.S.A. 2010 Supp. 44-510b is hereby amended to read as
 35 follows: 44-510b. Where death results from injury, compensation shall be
 36 paid as provided in K.S.A. 44-510h and 44-510i, and amendments
 37 thereto, and as follows:

38 (a) If an employee leaves any dependents wholly dependent upon
 39 the employee's earnings at the time of the ~~accident~~injury, all
 40 compensation benefits under this section shall be paid to such dependent
 41 persons. There shall be an initial payment of \$40,000 to the surviving
 42 legal spouse or a wholly dependent child or children or both. The initial
 43 payment shall not be subject to the 8% discount as provided in K.S.A. 44-

(w) "Mail" means the use of the United States postal service or other land based delivery service or transmission by electronic means, including deliver by fax, e-mail or other electronic delivery method designated by the director of workers compensation.

531, and amendments thereto. The initial payment shall be immediately due and payable and apportioned 50% to the surviving legal spouse and 50% to the dependent children. Thereafter, such dependents shall be paid weekly compensation, except as otherwise provided in this section, in a total sum to all such dependents, equal to 66 2/3% of the average gross weekly wage of the employee at the time of the accidentinjury, computed as provided in K.S.A. 44-511, and amendments thereto, but in no event shall such weekly benefits exceed the maximum weekly benefits provided in K.S.A. 44-510c, and amendments thereto, nor be less than a minimum weekly benefit of the dollar amount nearest to 50% of the state's average weekly wage as determined pursuant to K.S.A. 44-511, and amendments thereto subject to the following:

(1) If the employee leaves a surviving legal spouse or a wholly dependent child or children, or both, who are eligible for benefits under this section, then all death benefits shall be paid to such surviving spouse or children, or both, and no benefits shall be paid to any other wholly or partially dependent persons.

(2) A surviving legal spouse shall be paid compensation benefits for life, except as otherwise provided in this section.

(3) Any wholly dependent child of the employee shall be paid compensation, except as otherwise provided in this section, until such dependent child becomes 18 years of age. A wholly dependent child of the employee shall be paid compensation, except as otherwise provided in this section, until such dependent child becomes 23 years of age during any period of time that one of the following conditions is met:

(A) The wholly dependent child is not physically or mentally capable of earning wages in any type of substantial and gainful employment; or

(B) the wholly dependent child is a student enrolled full-time in an accredited institution of higher education or vocational education.

(4) If the employee leaves no legal spouse or dependent children eligible for benefits under this section but leaves other dependents wholly dependent upon the employee's earnings, such other dependents shall receive weekly compensation benefits as provided in this subsection until death, remarriage or so long as such other dependents do not receive more than 50% of their support from any other earnings or income or from any other source, except that the maximum benefits payable to all such other dependents, regardless of the number of such other dependents, shall not exceed a maximum amount of \$18,500.

(b) Where the employee leaves a surviving legal spouse and dependent children who were wholly dependent upon the employee's earnings and are eligible for benefits under this section 50% of the maximum weekly benefits payable shall be apportioned to such spouse

1 and 50% to such dependent children.

2 (c) If an employee does not leave any dependents who were wholly
3 dependent upon the employee's earnings at the time of the ~~accident~~injury
4 but leaves dependents, other than a spouse or children, in part dependent
5 on the employee's earnings, such percentage of a sum equal to three times
6 the employee's average yearly earnings but not exceeding \$18,500 but not
7 less than \$2,500, as such employee's average annual contributions which
8 the employee made to the support of such dependents during the two
9 years preceding the date of the ~~accident~~injury, bears to the employee's
10 average yearly earnings during the contemporaneous two-year period,
11 shall be paid in compensation to such dependents, in weekly payments as
12 provided in subsection (a), not to exceed \$18,500 to all such dependents.

13 (d) If an employee does not leave any dependents, either wholly or
14 partially dependent upon the employee, a lump-sum payment of \$25,000
15 shall be made to the legal heirs of such employee in accordance with
16 Kansas law. However under no circumstances shall such payment escheat
17 to the state. Notwithstanding the provisions of this subsection, no such
18 payment shall be required if the employer has procured a life insurance
19 policy, with beneficiaries designated by the employee, providing
20 coverage in an amount not less than \$18,500.

21 (e) The administrative law judge, except as otherwise provided in
22 this section, shall have the power and authority to apportion and
23 reapportion the compensation allowed under this section, either to wholly
24 dependent persons or partially dependent persons, in accordance with the
25 degree of dependency as of the date of the ~~accident~~injury, except that the
26 weekly payment of compensation to any and all dependents shall not
27 exceed the maximum nor be less than the minimum weekly benefits
28 provided in subsection (a).

29 (f) In all cases of death compensable under this section, the
30 employer shall pay the reasonable expense of burial not exceeding
31 \$5,000. *Where required, the employer shall pay the costs of a court-*
32 *appointed conservator not to exceed \$1,000.*

33 (g) The marriage or death of any dependent shall terminate all
34 compensation, under this section, to such dependent except the marriage
35 of the surviving legal spouse shall not terminate benefits to such spouse.
36 Upon the death of the surviving legal spouse or the marriage or death of a
37 dependent child, the compensation payable to such spouse or child shall
38 be reapportioned to those, among the surviving legal spouse and
39 dependent children, who remain eligible to receive compensation under
40 this section.

41 (h) Notwithstanding any other provision in this section to the
42 contrary, the maximum amount of compensation benefits payable under
43 this section, including the initial payment in subsection (a) to any and all

dependents by the employer shall not exceed a total amount of \$250,000 \$300,000 and when such total amount has been paid the liability of the employer for any further compensation under this section to dependents, other than minor children of the employee, shall cease except that the payment of compensation under this section to any minor child of the employee shall continue for the period of the child's minority at the weekly rate in effect when the employer's liability is otherwise terminated under this subsection and shall not be subject to termination under this subsection until such child becomes 18 years of age.

(i) Persons receiving benefits under this section shall submit an annual statement to the insurance carrier, self-insured employer or group-funded workers compensation pool paying the benefits, in such form and containing such information relating to eligibility for compensation under this section as may be required by rules and regulations of the director. If the person receiving benefits under this section is a surviving spouse or a dependent child who has reached the age of majority, such person shall personally submit an annual statement. If the person receiving benefits under this section is a dependent child subject to a conservator, the conservator of such child shall submit the annual statement. If such person fails to submit an annual statement, the payer of benefits may notify the director of such failure and the director shall notify the person of the failure by certified mail with return receipt. If such person fails to submit the annual statement or fails to reasonably provide the required information within 30 days after receipt of the notice from the director, all compensation benefits paid under this section to such person shall be suspended until the annual statement is submitted in proper form to the payer of benefits.

Sec. 6. K.S.A. 44-510c is hereby amended to read as follows: 44-510c. Where death does not result from the injury, compensation shall be paid as provided in K.S.A. 44-510h and 44-510i, 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 $66\frac{2}{3}\%$ 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. Expert evidence shall be required to prove permanent total disability.~~

(3) *An injured worker shall not be eligible to receive more than one award of workers compensation permanent total disability in such worker's lifetime.*

(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. 44-510h and 44-510i, 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 66 $\frac{2}{3}$ % 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.

(2) (A) 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~~ *restrictions* 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 provided 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.~~ *if there is an authorized treating physician, such physician's opinion regarding the employee's work status shall be presumed to be determinative.*

(B) *Where the employee remains employed with the employer against whom benefits are sought, an employee shall be entitled to temporary total disability benefits if the authorized treating physician imposed temporary restrictions as a result of the work injury which the employer cannot accommodate. A refusal by the employee of accommodated work within the temporary restrictions imposed by the*

The employer is permitted to provide work which will meet the restrictions for the employee at the employer's own company or at any other for-profit or not-for-profit organization or company.

1 authorized treating physician shall result in a rebuttable presumption that
2 the employee is ineligible to receive temporary total disability benefits.

3 (C) If the employee has been terminated for cause or voluntarily
4 resigns following a compensable injury, the employer shall not be liable
5 for temporary total disability benefits if the employer could have
6 accommodated the temporary restrictions imposed by the authorized
7 treating physician but for the employee's separation from employment.

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

17 (4) An employee shall not be entitled to receive temporary total
18 disability benefits for those weeks during which the employee is also
19 receiving unemployment benefits.

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

23 Sec. 7. K.S.A. 44-510d is hereby amended to read as follows: 44-
24 510d. (a) Where disability, partial in character but permanent in quality,
25 results from the injury, the injured employee shall be entitled to the
26 compensation provided in K.S.A. 44-510h and 44-510i, and amendments
27 thereto, ~~but~~ The injured employee may be entitled to payment of
28 temporary total disability as defined in K.S.A. 44-510c, and amendments
29 thereto, or temporary partial disability as defined in K.S.A. 44-510e(a)
30 (1), and amendments thereto, provided that the injured employee shall not
31 be entitled to any other or further compensation for or during the first
32 week following the injury unless such disability exists for three
33 consecutive weeks, in which event compensation shall be paid for the
34 first week. Thereafter compensation shall be paid for temporary total ~~loss~~
35 ~~of use and/or~~ temporary partial disability as provided in the following
36 schedule, 66 ²/₃% of the average gross weekly wages to be computed as
37 provided in K.S.A. 44-511, and amendments thereto, except that in no
38 case shall the weekly compensation be more than the maximum as
39 provided for in K.S.A. 44-510c, and amendments thereto.

40 (b) If there is an award of permanent disability as a result of the
41 injury there shall be a presumption that disability existed immediately
42 after the injury and compensation is to be paid for not to exceed the
number of weeks allowed in the following schedule:

- 1 (1) For loss of a thumb, 60 weeks.
- 2 (2) For the loss of a first finger, commonly called the index finger,
- 3 37 weeks.
- 4 (3) For the loss of a second finger, 30 weeks.
- 5 (4) For the loss of a third finger, 20 weeks.
- 6 (5) For the loss of a fourth finger, commonly called the little finger,
- 7 15 weeks.
- 8 (6) Loss of the first phalange of the thumb or of any finger shall be
- 9 considered to be equal to the loss of $\frac{1}{2}$ of such thumb or finger, and the
- 10 compensation shall be $\frac{1}{2}$ of the amount specified above. The loss of the
- 11 first phalange and any part of the second phalange of any finger, which
- 12 includes the loss of any part of the bone of such second phalange, shall be
- 13 considered to be equal to the loss of $\frac{2}{3}$ of such finger and the
- 14 compensation shall be $\frac{2}{3}$ of the amount specified above. The loss of the
- 15 first phalange and any part of the second phalange of a thumb which
- 16 includes the loss of any part of the bone of such second phalange, shall be
- 17 considered to be equal to the loss of the entire thumb. The loss of the first
- 18 and second phalanges and any part of the third proximal phalange of any
- 19 finger, shall be considered as the loss of the entire finger. Amputation
- 20 through the joint shall be considered a loss to the next higher schedule.
- 21 (7) For the loss of a great toe, 30 weeks.
- 22 (8) For the loss of any toe other than the great toe, 10 weeks.
- 23 (9) The loss of the first phalange of any toe shall be considered to be
- 24 equal to the loss of $\frac{1}{2}$ of such toe and the compensation shall be $\frac{1}{2}$ of the
- 25 amount above specified.
- 26 (10) The loss of more than one phalange of a toe shall be considered
- 27 to be equal to the loss of the entire toe.
- 28 (11) For the loss of a hand, 150 weeks.
- 29 (12) For the loss of a forearm, 200 weeks.
- 30 (13) For the loss of an arm, excluding the shoulder joint, shoulder
- 31 girdle, shoulder musculature or any other shoulder structures, 210 weeks,
- 32 and for the loss of an arm, including the shoulder joint, shoulder girdle,
- 33 shoulder musculature or any other shoulder structures, 225 weeks.
- 34 (14) For the loss of a foot, 125 weeks.
- 35 (15) For the loss of a lower leg, 190 weeks.
- 36 (16) For the loss of a leg, 200 weeks.
- 37 (17) For the loss of an eye, or the complete loss of the sight thereof,
- 38 120 weeks.
- 39 (18) Amputation or severance below the wrist shall be considered as
- 40 the loss of a hand. Amputation at the wrist and below the elbow shall be
- 41 considered as the loss of the forearm. Amputation at or above the elbow
- 42 shall be considered loss of the arm. Amputation below the ankle shall be
- 43 considered loss of the foot. Amputation at the ankle and below the knee

1 shall be considered as loss of the lower leg. Amputation at or above the
2 knee shall be considered as loss of the leg.

3 (19) For the complete loss of hearing of both ears, 110 weeks.

4 (20) For the complete loss of hearing of one ear, 30 weeks.

5 (21) Permanent loss of the use of a finger, thumb, hand, shoulder,
6 arm, forearm, toe, foot, leg or lower leg or the permanent loss of the sight
7 of an eye or the hearing of an ear, shall be equivalent to the loss thereof.
8 For the permanent partial loss of the use of a finger, thumb, hand,
9 shoulder, arm, toe, foot or leg, or the sight of an eye or the hearing of an
10 ear, compensation shall be paid as provided for in K.S.A. 44-510c, and
11 amendments thereto, per week during that proportion of the number of
12 weeks in the foregoing schedule provided for the loss of such finger,
13 thumb, hand, shoulder, arm, toe, foot or leg; or the sight of an eye or the
14 hearing of an ear, which partial loss thereof bears to the total loss of a
15 finger, thumb, hand, shoulder, arm, toe, foot or leg, or the sight of an eye
16 or the hearing of an ear; but in no event shall the compensation payable
17 hereunder for such partial loss exceed the compensation payable under
18 the schedule for the total loss of such finger, thumb, hand, arm, toe, foot
19 or leg, or the sight of an eye or the hearing of an ear, exclusive of the
20 healing period. As used in this paragraph (21), "shoulder" means the
21 shoulder joint, shoulder girdle, shoulder musculature or any other
22 shoulder structures.

23 (22) For traumatic hernia, compensation shall be limited to the
24 compensation under K.S.A. 44-510h and 44-510i, and amendments
25 thereto, compensation for temporary total disability during such period of
26 time as such employee is actually unable to work on account of such
27 hernia, and, in the event such hernia is inoperable, weekly compensation
28 during 12 weeks, except that, in the event that such hernia is operable, the
29 unreasonable refusal of the employee to submit to an operation for
30 surgical repair of such hernia shall deprive such employee of any benefits
31 under the workers compensation act.

32 (23) Loss of or loss of use of a scheduled member shall be based
33 upon permanent impairment of function to the scheduled member as
34 determined using the fourth edition of the American medical association
35 guides to the evaluation of permanent impairment, if the impairment is
36 contained therein.

37 (24) *Where an injury results in the loss of or loss of use of more than*
38 *one scheduled member within a single extremity, the functional*
39 *impairment attributable to each scheduled member shall be combined*
40 *pursuant to the fourth edition of the American medical association guides*
41 *for evaluation of permanent impairment and compensation awarded shall*
42 *be calculated to the highest scheduled member actually impaired.*

(b)(c) Whenever the employee is entitled to compensation for a

specific injury under the foregoing schedule, the same shall be exclusive of all other compensation except the benefits provided in K.S.A. 44-510h and 44-510i, and amendments thereto, and no additional compensation shall be allowable or payable for any temporary or permanent, partial or total disability, except that the director, in proper cases, may allow additional compensation during the actual healing period, following amputation. The healing period shall not be more than 10% of the total period allowed for the scheduled injury in question nor in any event for longer than 15 weeks. The return of the employee to the employee's usual occupation shall terminate the healing period.

(d) *The amount of compensation for permanent partial disability under this section shall be determined as follows:*

(1) *Find the payment rate which shall be the lesser of (A) the amount determined by multiplying the average weekly wage of the worker prior to such injury by 66 2/3% or (B) the maximum provided in K.S.A. 44-510c, and amendments thereto;*

(2) *find the number of weeks payable by (A) subtracting the weeks of temporary disability compensation paid from the weeks provided on the schedule. To calculate the number of weeks of temporary disability compensation to be deducted pursuant to this subsection (d)(2), divide the sum of all temporary total and temporary partial disability compensation paid by the payment rate determined in this subsection (d)(1), and (B) multiply the remainder by the percentage of permanent partial impairment of function as determined under subsection (b)(23); and*

(3) *multiply the number of weeks determined in paragraph (2) of this subsection (d) by the payment rate determined in paragraph (1) of this subsection (d).*

The resulting award shall be paid for the number of weeks at the full payment rate until fully paid or modified. Under no circumstances shall the period of permanent partial disability run concurrently with the period of temporary total or temporary partial disability.

Sec. 8. K.S.A. 44-510e is hereby amended to read as follows: 44-510e. (a) ~~If the employer and the employee are unable to agree upon the amount of compensation to be paid in the case of injury not covered by the schedule in K.S.A. 44-510d and amendments thereto, the amount of compensation shall be settled according to the provisions of the workers compensation act as in other cases of disagreement, except that~~ In case of injury resulting in temporary or permanent partial general disability not covered by ~~such~~ the schedule in K.S.A. 44-510d, and amendments thereto, the employee shall receive weekly compensation as determined in this subsection during ~~such~~ the period of temporary or permanent partial general disability not exceeding a maximum of 415 weeks.

(1) Weekly compensation for temporary partial general disability shall be $66\frac{2}{3}\%$ of the difference between the average gross weekly wage that the employee was earning prior to ~~such~~*the date of injury as provided in the workers compensation act* and the amount the employee is actually earning after such injury in any type of employment, ~~except that~~. In no case shall such weekly compensation exceed the maximum as provided for in K.S.A. 44-510c, and amendments thereto.

(2) (A) Permanent partial general disability exists when the employee is disabled in a manner which is partial in character and permanent in quality and which is not covered by the schedule in K.S.A. 44-510d, and amendments thereto. ~~The extent of permanent partial general disability shall be the extent, expressed as a percentage, to which the employee, in the opinion of the physician, has lost the ability to perform the work tasks that the employee performed in any substantial gainful employment during the fifteen year period preceding the accident, averaged together with the difference between the average weekly wage the worker was earning at the time of the injury and the average weekly wage the worker is earning after the injury. In any event, the extent of permanent partial general disability shall not be less than the percentage of functional impairment. Functional impairment means the extent, expressed as a percentage, of the loss of a portion of the total physiological capabilities of the human body as established by competent medical evidence and based on the fourth edition of the American Medical Association Guides to the Evaluation of Permanent Impairment, if the impairment is contained therein. An employee shall not be entitled to receive permanent partial general disability compensation in excess of the percentage of functional impairment as long as the employee is engaging in any work for wages equal to 90% or more of the average gross weekly wage that the employee was earning at the time of the injury. If the employer and the employee are unable to agree upon the employee's functional impairment and if at least two medical opinions based on competent medical evidence disagree as to the percentage of functional impairment, such matter may be referred by the administrative law judge to an independent health care provider who shall be selected by the administrative law judge from a list of health care providers maintained by the director. The health care provider selected by the director pursuant to this section shall issue an opinion regarding the employee's functional impairment which shall be considered by the administrative law judge in making the final determination. Compensation for permanent partial general disability shall also be paid as provided in this section where an injury results in:~~

(i) *The loss of or loss of use of a shoulder, arm, forearm or hand of one upper extremity, combined with the loss of or loss of use of a*

1 shoulder, arm, forearm or hand of the other upper extremity;
2 (ii) the loss of or loss of use of a leg, lower leg or foot of one lower
3 extremity, combined with the loss of or loss of use of a leg, lower leg or
4 foot of the other lower extremity; or
5 (iii) the loss of or loss of use of both eyes.
6 (B) The extent of permanent partial general disability shall be the
7 percentage of functional impairment the employee sustained on account
8 of the injury as established by competent medical evidence and based on
9 the fourth edition of the American medical association guides to the
10 evaluation of permanent impairment, if the impairment is contained
11 therein.
12 (C) An employee may be eligible to receive permanent partial
13 general disability compensation in excess of the percentage of functional
14 impairment if:
15 (i) The percentage of functional impairment determined to be
16 caused solely by the injury exceeds 7½% to the body as a whole or the
17 overall functional impairment is equal to or exceeds 10% to the body as
18 a whole in cases where there is preexisting functional impairment; and
19 (ii) the employee sustained a post-injury wage loss, as defined in
20 K.S.A. 44-510e(a)(2)(E), and amendments thereto, 10% percent which is
21 directly attributable to the work injury and not to other causes or factors.
22 In such cases, the extent of work disability is determined by averaging
23 together the percentage of post-injury task loss demonstrated by the
24 employee to be caused by the injury and the percentage of post-injury
25 wage loss demonstrated by the employee to be caused by the injury.
26 (D) "Task loss" means the percentage to which the employee, in the
27 opinion of a licensed physician, has lost the ability to perform the work
28 tasks that the employee performed in any substantial gainful employment
29 during the five-year period preceding the injury. The permanent
30 restrictions imposed by a licensed physician as a result of the work injury
31 shall be used to determine those work tasks which the employee has lost
32 the ability to perform. If the employee has preexisting permanent
33 restrictions, any work tasks which the employee would have been deemed
34 to have lost the ability to perform, had a task loss analysis been
35 completed prior to the injury at issue, shall be excluded for the purposes
36 of calculating the task loss which is directly attributable to the current
37 injury.
38 (E) "Wage loss" means the difference between the average weekly
39 wage the employee was earning at the time of the injury and the average
40 weekly wage the employee is capable of earning after the injury. The
41 capability of a worker to earn post-injury wages shall be established
42 based upon a consideration of all factors, including, but not limited to,
43 the injured worker's age, physical capabilities, education and training,

prior experience, and availability of jobs in the open labor market. The administrative law judge shall impute an appropriate post-injury average weekly wage based on such factors. Where the employee is engaged in post-injury employment for wages, there shall be a rebuttable presumption that the average weekly wage an injured worker is actually earning constitutes the post-injury average weekly wage that the employee is capable of earning. The presumption may be overcome by competent evidence.

(i) To establish post-injury wage loss, the employee must have the legal capacity to enter into a valid contract of employment. Wage loss caused by voluntary resignation or termination for cause shall in no way be construed to be caused by the injury.

(ii) The actual or projected weekly value of any employer-paid fringe benefits are to be included as part of the worker's post-injury average weekly wage and shall be added to the wage imputed by the administrative law judge pursuant to K.S.A. 44-510e(a)(2)(E), and amendments thereto.

(iii) The injured worker's refusal of accommodated employment within the worker's medical restrictions as established by the authorized treating physician and at a wage equal to 90% or more of the pre-injury average weekly wage shall result in a rebuttable presumption of no wage loss.

(F) The amount of weekly compensation for permanent partial general disability shall be determined as follows:

(1)(i) Find the payment rate which shall be the lesser of (A) the amount determined by multiplying the average gross weekly wage of the worker prior to such injury by 66 ²/₃% or (B) the maximum provided in K.S.A. 44-510c, and amendments thereto;

(2)(ii) find the number of disability weeks payable by (a) subtracting from 415 weeks the total number of weeks of temporary total disability compensation was paid, excluding the first 15 weeks of temporary total disability compensation that was paid, and multiplying. To calculate the number of weeks of temporary disability compensation to be deducted pursuant to subparagraph (F)(ii), divide the sum of all temporary total and temporary partial disability compensation paid by the payment rate determined in subsection(a)(2)(E)(i), and (b) multiply the remainder by the percentage of permanent partial general disability as determined under this subsection (a); and

(3)(iii) multiply the number of disability weeks determined in paragraph (2) of this subsection (a) subsection (a)(2)(F) by the payment rate determined in paragraph (1) of this subsection (a) subsection (a)(2)(F)(i).

The resulting award shall be paid for the number of disability weeks at

1 the full payment rate until fully paid or modified. ~~If there is an award of~~
2 ~~permanent disability as a result of the compensable injury, there shall be a~~
3 ~~presumption that disability existed immediately after such injury.~~ In any
4 case of permanent partial disability under this section, the employee shall
5 be paid compensation for not to exceed 415 weeks following the date of
6 such injury, ~~subject to review and modification as provided in K.S.A. 44-~~
7 ~~528 and amendments thereto.~~ *If there is an award of permanent disability*
8 *as a result of the compensable injury, there shall be a presumption that*
9 *disability existed immediately after such injury. Under no circumstances*
10 *shall the period of permanent partial disability run concurrently with the*
11 *period of temporary total or temporary partial disability.*

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

20 (c) The total amount of compensation that may be allowed or
21 awarded an injured employee for all injuries received in any one accident
22 shall in no event exceed the compensation which would be payable under
23 the workers compensation act for 100% permanent total disability
24 resulting from such accident.

25 (d) Where a minor employee or a minor employee's dependents are
26 entitled to compensation under the workers compensation act, such
27 compensation shall be exclusive of all other remedies or causes of action
28 for such injury or death, and no claim or cause of action against the
29 employer shall inure or accrue to or exist in favor of the parent or parents
30 of such minor employee on account of any damage resulting to such
31 parent or parents on account of the loss of earnings or loss of service of
32 such minor employee.

33 (e) In any case of injury to or death of an employee, where the
34 employee or the employee's dependents are entitled to compensation
35 under the workers compensation act, such compensation shall be
36 exclusive of all other remedies or causes of action for such injury or
37 death, and no claim or action shall inure, accrue to or exist in favor of the
38 surviving spouse or any relative or next of kin of such employee against
39 such employer on account of any damage resulting to such surviving
40 spouse or any relative or next of kin on account of the loss of earnings,
41 services, or society of such employee or on any other account resulting
42 from or growing out of the injury or death of such employee.

43 Sec. 9. K.S.A. 44-510f is hereby amended to read as follows: 44-

510f. (a) Notwithstanding any provision of the workers compensation act to the contrary, the maximum compensation benefits payable by an employer shall not exceed the following:

(1) For permanent total disability, including temporary total, temporary partial, permanent partial and temporary partial disability payments paid or due, ~~\$125,000~~ \$155,000 for an injury or any aggravation thereof;

(2) for temporary total disability, including any prior permanent total, permanent partial or temporary partial disability payments paid or due, ~~\$100,000~~ for an injury or any aggravation thereof;

(3) subject to the provisions of subsection (a)(4), for permanent or temporary partial disability, including any prior temporary total, permanent total, temporary partial, or permanent partial disability payments paid or due, ~~\$100,000~~ \$130,000 for an injury or any aggravation thereof; and

(4) for permanent partial disability, where functional impairment only is awarded, ~~\$50,000~~ \$75,000 for an injury or aggravation thereof. *The \$75,000 cap contained in this subsection shall apply whether or not temporary total disability or temporary partial disability benefits were paid.*

(b) If an employer shall voluntarily pay unearned wages to an employee in addition to ~~and in excess of~~ any amount of disability benefits to which the employee is entitled under the workers compensation act, the excess amount paid shall:

(1) Shall be allowed as a credit to the employer in any final lump-sum settlement, or

(2) may be withheld from the employee's wages in weekly amounts ~~the same as equal to~~ the weekly amount or amounts paid in excess of compensation due, ~~but not until and unless~~ *The excess amount paid may only be withheld from the employee's wages if the employee's average gross weekly wage for the calendar year exceeds 125% of the state's average weekly wage, determined as provided in K.S.A. 44-511, and amendments thereto. The provisions of this subsection shall not apply to any employer who pays any such unearned wages to an employee pursuant to an agreement between the employer and employee or labor organization to which the employee belongs.*

Sec. 10. K.S.A. 2010 Supp. 44-510h is hereby amended to read as follows: 44-510h. (a) It shall be the duty of the employer to provide the services of a health care provider, and such medical, surgical and hospital treatment, including nursing, medicines, medical and surgical supplies, ambulance, crutches, apparatus and transportation to and from the home of the injured employee to a place outside the community in which such employee resides, and within such community if the director, in the

\$130,000

1 director's discretion, so orders, including transportation expenses
2 computed in accordance with subsection (a) of K.S.A. 44-515, and
3 amendments thereto, as may be reasonably necessary to cure and relieve
4 the employee from the effects of the injury.

5 (b) (1) If the director finds, upon application of an injured employee,
6 that the services of the health care provider furnished as provided in
7 subsection (a) and rendered on behalf of the injured employee are not
8 satisfactory, the director may authorize the appointment of some other
9 health care provider. In any such case, the employer shall submit the
10 names of ~~three~~ two health care providers who, if possible given the
11 availability of local health care providers, are not associated in practice
12 together. The injured employee may select one from the list who shall be
13 the authorized treating health care provider. If the injured employee is
14 unable to obtain satisfactory services from any of the health care
15 providers submitted by the employer under this paragraph, either party or
16 both parties may request the director to select a treating health care
17 provider.

18 (2) Without application or approval, an employee may consult a
19 health care provider of the employee's choice for the purpose of
20 examination, diagnosis or treatment, but the employer shall only be liable
21 for the fees and charges of such health care provider up to a total amount
22 of \$500. The amount allowed for such examination, diagnosis or
23 treatment shall not be used to obtain a functional impairment rating. Any
24 medical opinion obtained in violation of this prohibition shall not be
25 admissible in any claim proceedings under the workers compensation act.

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

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

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

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

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

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

(d) In any employment to which the workers compensation act applies, the employer shall be liable to each employee who is employed as a duly authorized law enforcement officer, firefighter, driver of an ambulance as defined in subsection (b) of K.S.A. 65-6112, and amendments thereto, an ambulance attendant as defined in subsection (d) of K.S.A. 65-6112, and amendments thereto, or a member of a regional emergency medical response team as provided in K.S.A. 48-928, and amendments thereto, including any person who is serving on a volunteer basis in such capacity, for all reasonable and necessary preventive medical care and treatment for hepatitis to which such employee is exposed under circumstances arising out of and in the course of employment.

(e) *It is presumed that the employer's obligation to provide the services of a health care provider, and such medical, surgical and hospital treatment, including nursing, medicines, medical and surgical supplies, ambulance, crutches, apparatus and transportation to and from the home of the injured employee to a place outside the community in which such employee resides, and within such community if the director, in the director's discretion, so orders, including transportation expenses computed in accordance with subsection (a) of K.S.A. 44-515, and amendments thereto, shall terminate upon the employee reaching maximum medical improvement. Such presumption may be overcome with medical evidence that it is more probably true than not that additional medical treatment will be necessary after such time as the employee reaches maximum medical improvement. The term "medical treatment" as used in this subsection (e) means only that treatment provided or prescribed by a licensed healthcare provider and shall not include home exercise programs or over-the-counter medications.*

Sec. 11. K.S.A. 2010 Supp. 44-510k is hereby amended to read as follows: 44-510k. (a) (1) At any time after the entry of an award for compensation wherein future medical benefits were awarded, the employee, employer, dependent, insurance carrier or any other interested party may make application for a hearing, in such form as the director may require for the furnishing termination or modification 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.

(2) The administrative law judge can (A) make an award for further medical care if the administrative law judge finds that it is more probably true than not that the injury which was the subject of the underlying award is the prevailing factor in the need for further medical care and that the care requested is necessary to cure or relieve the effects of the

1 ~~accidental injury which was the subject of the underlying award such~~
 2 ~~injury, or (B) terminate or modify an award of current or future medical~~
 3 ~~care if the administrative law judge finds that no further medical care is~~
 4 ~~required, the injury which was the subject of the underlying award is not~~
 5 ~~the prevailing factor in the need for further medical care, or that the care~~
 6 ~~requested is not necessary to cure or relieve the effects of such injury.~~

7 (3) If the claimant has not ~~required~~ medical treatment, as defined in
 8 ~~K.S.A. 44-510h(e)~~, and amendments thereto, within two years from the
 9 date of the award, the employer shall be permitted to make application
 10 under this section for permanent termination of future medical benefits.
 11 In such case, there shall be a presumption that no further medical care is
 12 needed as a result of the underlying injury. The presumption may be
 13 overcome by competent medical evidence.

14 (4) No post-award benefits shall be ordered, modified or terminated
 15 without giving all parties to the award the opportunity to present
 16 evidence, including taking testimony on any disputed matters. A finding
 17 with regard to a disputed issue shall be subject to a full review by the
 18 board under subsection (b) of K.S.A. 44-551, and amendments thereto.
 19 Any action of the board pursuant to post-award orders shall be subject to
 20 review under K.S.A. 44-556, and amendments thereto.

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

34 (c) The administrative law judge may award attorney fees and costs
 35 on the claimant's behalf consistent with subsection (g) of K.S.A. 44-536,
 36 and amendments thereto. As used in this subsection, "costs" include, but
 37 are not limited to, witness fees, mileage allowances, any costs associated
 38 with reproduction of documents that become a part of the hearing record,
 39 the expense of making a record of the hearing and such other charges as
 40 are by statute authorized to be taxed as costs.

41 Sec. 12. K.S.A. 2010 Supp. 44-511 is hereby amended to read as
 42 follows: 44-511. (a) As used in this section:

43 (1) The term "money" shall be construed to mean the gross

subsection (e) of

received

or two years from the date the claimant last received medical treatment

remuneration, on an hourly, output, salary, commission or other basis, at which the service rendered is recompensed in money by the employer, but it earned while employed by the employer, including bonuses and gratuities. Money 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 paragraph 2.

(2) (A) 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) (i) 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 injury, 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) and (ii) employer-paid life insurance, disability insurance, health and accident insurance and employer contributions to pension and profit sharing plans.

(B) 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.

(C) Additional compensation shall not include the value of such remuneration until and unless such remuneration is discontinued be included in the calculation of average wage until and unless such additional compensation is discontinued. If such remuneration additional compensation is discontinued subsequent to a computation of average gross weekly wages under this section, there shall be a recomputation to include such discontinued remuneration additional compensation.

(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

1 the accident is employed to work, agrees to work, or is expected to work
2 on a regular basis less than 40 hours per week; and (B) who at the time of
3 the accident is working in any type of trade or employment where there is
4 no customary number of hours constituting an ordinary day in the
5 character of the work involved or performed by the employee.

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

15 (b) (1) ~~Unless otherwise provided, the employee's average~~
16 ~~gross weekly wage for the purpose of computing any compensation~~
17 ~~benefits provided by the workers compensation act shall be determined as~~
18 ~~follows: the wages the employee earned during the calendar weeks~~
19 ~~employed by the employer, up to 26 calendar weeks immediately~~
20 ~~preceding the date of the injury, divided by the number of calendar weeks~~
21 ~~the employee actually worked, or by 26 as the case may be.~~

22 (1) ~~If at the time of the accident the money rate is fixed by the year,~~
23 ~~the average gross weekly wage shall be the yearly rate so fixed divided~~
24 ~~by 52, plus the average weekly value of any additional compensation and~~
25 ~~the value of the employee's average weekly overtime as computed in~~
26 ~~paragraph (4) of this subsection.~~

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

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

37 (4) ~~If at the time of the accident the employee's money rate was~~
38 ~~fixed by the hour, the employee's average gross weekly wage shall be~~
39 ~~determined as follows: (A) If the employee was a part time hourly~~
40 ~~employee, as defined in this section, the average gross weekly wage shall~~
41 ~~be determined in the same manner as provided in paragraph (5) of this~~
42 ~~subsection; (B) if the employee is a full time hourly employee, as defined~~
43 ~~in this section, the average gross weekly wage shall be determined as~~

1 follows: (i) A daily money rate shall first be found by multiplying the
2 straight time hourly rate applicable at the time of the accident, by the
3 customary number of working hours constituting an ordinary day in the
4 character of work involved; (ii) the straight time weekly rate shall be
5 found by multiplying the daily money rate by the number of days and half
6 days that the employee usually and regularly worked, or was expected to
7 work, but 40 hours shall constitute the minimum hours for computing the
8 wage of a full time hourly employee, unless the employer's regular and
9 customary workweek is less than 40 hours, in which case, the number of
10 hours in such employer's regular and customary workweek shall govern;
11 (iii) the average weekly overtime of the employee shall be the total
12 amount earned by the employee in excess of the amount of straight time
13 money earned by the employee during the 26 calendar weeks
14 immediately preceding the date of the accident, or during the actual
15 number of such weeks the employee was employed if less than 26 weeks,
16 divided by the number of such weeks; and (iv) the average gross weekly
17 wage of a full time hourly employee shall be the total of the straight time
18 weekly rate, the average weekly overtime and the weekly average of any
19 additional compensation.

20 (5) If at the time of the accident the money rate is fixed by the
21 output of the employee, on a commission or percentage basis, on a flat
22 rate basis for performance of a specified job, or on any other basis where
23 the money rate is not fixed by the week, month, year or hour, and if the
24 employee has been employed by the employer at least one calendar week
25 immediately preceding the date of the accident, the average gross weekly
26 wage shall be the gross amount of money earned during the number of
27 calendar weeks so employed, up to a maximum of 26 calendar weeks
28 immediately preceding the date of the accident, divided by the number of
29 weeks employed, or by 26 as the case may be, plus the average weekly
30 value of any additional compensation and the value of the employee's
31 average weekly overtime computed as provided in paragraph (4) of this
32 subsection.

33 (2) If the employee had been in the employment of *actually*
34 *employed* by the employer for less than one calendar week immediately
35 preceding the accident *or injury*, the average gross weekly wage shall be
36 determined by the administrative law judge based upon all of the
37 evidence and circumstances, including the usual wage for similar services
38 paid by the same employer, or if the employer has no employees
39 performing similar services, the usual wage paid for similar services by
40 other employers. The average gross weekly wage so determined shall not
41 exceed the actual average gross weekly wage the employee was
42 reasonably expected to earn in the employee's specific employment,
including the average weekly value of any additional compensation and

1 the value of the employee's average weekly overtime computed as
2 provided in paragraph (4) of this subsection. In making any computations
3 under this paragraph (5), workweeks during which the employee was on
4 vacation, leave of absence, sick leave or was absent the entire workweek
5 because of illness or injury shall not be considered.

6 (6) (A) The average gross weekly wage of a person serving on a
7 volunteer basis as a duly authorized law enforcement officer, ambulance
8 attendants and drivers as provided in subsection (b) of K.S.A. 44-508,
9 and amendments thereto, firefighter or members of regional emergency
10 medical response teams as provided in K.S.A. 48-928, and amendments
11 thereto, who receives no wages for such services, or who receives wages
12 which are substantially less than the usual wages paid for such services
13 by comparable employers to employees who are not volunteers, shall be
14 computed on the basis of the dollar amount closest to, but not exceeding,
15 112.5% of the state average weekly wage.

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

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

35 (D) The average weekly wage of any other volunteer under the
36 workers compensation act, who receives no wages for such services, or
37 who receives wages which are substantially less than the usual wages
38 paid for such services by comparable employers to employees who are
39 not volunteers, shall be computed on the basis of the usual wages paid by
40 the employer for such services to employees who are not volunteers, or, if
41 the employer has no employees performing such services for wages who
42 are not volunteers, the average gross weekly wage shall be computed on
43 the basis of the usual wages paid for such services by comparable

1 employers to employees who are not volunteers. Volunteer employment is
2 not presumed to be full time employment.

3 (7)(3) The average gross weekly wage of an employee who sustains
4 an injury by accident arising out of and in the course of multiple
5 employment, in which such employee who performs the same or a very
6 similar type of work on a part-time basis for each of two or more
7 employers, shall be the total average gross weekly wage of such
8 employee paid by all the employers in such multiple employment. The
9 total average gross weekly wage of such employee shall be the total
10 amount of the individual average gross weekly wage determinations
11 under this section for each individual employment of such multiple
12 employment sum of the average weekly wages of such employee paid by
13 each of the employers.

14 (8)(4) In determining an employee's average gross weekly wage
15 with respect to the employer against whom claim for compensation is
16 made, no money or additional compensation paid to or received by the
17 employee from such employer, or from any source other than from such
18 employer, shall be included as wages, except as provided in this section.
19 No wages, other compensation or benefits of any type, except as provided
20 in this section, shall be considered or included in determining the
21 employee's average gross weekly wage.

22 (5) (A) The average weekly wage of a person serving on a
23 volunteer basis as a duly authorized law enforcement officer, ambulance
24 attendants and drivers as provided in subsection (b) of K.S.A. 44-508,
25 and amendments thereto, firefighter or members of regional emergency
26 medical response teams as provided in K.S.A. 48-928, and amendments
27 thereto, who receives no wages for such services, or who receives wages
28 which are substantially less than the usual wages paid for such services
29 by comparable employers to employees who are not volunteers, shall be
30 computed on the basis of the dollar amount closest to, but not exceeding,
31 112 ½% of the state average weekly wage.

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

34 (C) The average weekly wage of a volunteer member of the Kansas
35 department of civil air patrol officially engaged in the performance of
36 functions specified in K.S.A. 48-3302, and amendments thereto, shall be
37 deemed to be \$476.38. Whenever the rates of compensation of the pay
38 plan for persons in the classified service under the Kansas civil service
39 act are increased for payroll periods chargeable to fiscal years
40 commencing after June 30, 1988, the average weekly wage which is
41 deemed to be the average weekly wage under the provisions of this
42 subsection for a volunteer member of the Kansas department of civil air
patrol shall be increased by an amount, adjusted to the nearest dollar,

1 computed by multiplying the average of the percentage increases in all
2 monthly steps of such pay plan by the average weekly wage deemed to be
3 the average weekly wage of such volunteer member under the provisions
4 of this subsection prior to the effective date of such increase in the rates
5 of compensation of the pay plan for persons in the classified service
6 under the Kansas civil service act.

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

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

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

25 (e)(d) Members of a labor union or other association who perform
26 services in behalf of the labor union or other association and who are not
27 paid as full-time employees of the labor union or other association and
28 who are injured or suffer occupational disease in the course of the
29 performance of duties in behalf of the labor union or other association
30 shall recover compensation benefits under the workers compensation act
31 from the labor union or other association if the labor union or other
32 association files an election with the director to bring its members who
33 perform such services under the coverage of the workers compensation
34 act. The average weekly wage for the purpose of this subsection shall be
35 based on what the employee would earn in the employee's general
36 occupation if at the time of the injury the employee had been performing
37 work in the employee's general occupation. The insurance coverage shall
38 be furnished by the labor union or other association.

39 Sec. 13. K.S.A. 44-515 is hereby amended to read as follows: 44-
40 515. (a) After an employee sustains an injury, the employee shall, upon
41 request of the employer, submit to an examination at any reasonable time
42 and place by any one or more reputable health care providers, selected by
43 the employer, and shall so submit to an examination thereafter at intervals

1 during the pendency of such employee's claim for compensation, upon
 2 the request of the employer, but the employee shall not be required to
 3 submit to an examination oftener than twice in any one month, unless
 4 required to do so in accordance with such orders as may be made by the
 5 director. *All benefits shall be suspended to an employee who refuses to*
 6 *submit to such examination or examinations until such time as the*
 7 *employee complies with the employer's request. The suspension of*
 8 *benefits shall occur even if the employer is under preliminary order to*
 9 *provide such benefits.* Any employee so submitting to an examination or
 10 such employee's authorized representative shall upon *written* request be
 11 entitled to receive and shall have delivered to such employee a copy of
 12 the health care provider's report of such examination within ~~15 days~~ *a*
 13 *reasonable amount of time* after such examination, which report shall be
 14 identical to the report submitted to the employer. If the employee is
 15 notified to submit to an examination before any health care provider in
 16 any town or city other than the residence of the employee at the time that
 17 the employee received an injury, the employee shall not be required to
 18 submit to an examination until such employee has been furnished with
 19 sufficient funds to pay for transportation to and from the place of
 20 examination at the rate prescribed for compensation of state officers and
 21 employees under K.S.A. 75-3203a, and amendments thereto, for each
 22 mile actually and necessarily traveled to and from the place of
 23 examination, any turnpike or other tolls and any parking fees actually and
 24 necessarily incurred, and in addition the sum of \$15 per day for each *full*
 25 *day or a part thereof* that the employee was required to be away from
 26 such employee's residence to defray such employee's board and lodging
 27 and living expenses. The employee shall not be liable for any fees or
 28 charge of any health care provider selected by the employer for making
 29 any examination of the employee. The employer or the insurance carrier
 30 of the employer of any employee making claim for compensation under
 31 the workers compensation act shall be entitled to a copy of the report of
 32 any health care provider who has examined or treated the employee in
 33 regard to such claim upon written request to the employee or the
 34 employee's attorney within ~~15 days~~ *a reasonable amount of time* after
 35 such examination or treatment, which report shall be identical to the
 36 report submitted to the employee or the employee's attorney.

37 (b) If the employee requests, such employee shall be entitled to have
 38 health care providers of such employee's own selection present at the time
 39 to participate in such examination.

40 (c) Unless a report is furnished as provided in subsection (a) and
 41 unless there is a reasonable opportunity thereafter for the health care
 42 providers selected by the employee to participate in the examination in
 the presence of the health care providers selected by the employer, the

at the employee's own expense

1 health care providers selected by the employer or employee shall not be
2 permitted afterwards to give evidence of the condition of the employee at
3 the time such examination was made.

4 (d) Except as provided in this section, there shall be no
5 disqualification or privilege preventing the furnishing of reports by or the
6 testimony of any health care provider who actually makes an examination
7 or treats an injured employee, prior to or after an injury.

8 (e) Any health care provider's opinion, whether the provider is a
9 treating health care provider or is an examining health care provider,
10 regarding a claimant's need for medical treatment, inability to work,
11 prognosis, diagnosis and disability rating shall be considered and given
12 appropriate weight by the trier of fact together with consideration of all
13 other evidence.

14 Sec. 14. K.S.A. 44-516 is hereby amended to read as follows: 44-
15 516. (a) In case of a dispute as to the injury, the director, in the
16 director's discretion, or upon request of either party, may employ one or
17 more neutral health care providers, not exceeding three in number, who
18 shall be of good standing and ability. The health care providers shall
19 make such examinations of the injured employee as the director may
20 direct. The report of any such health care provider shall be considered by
21 the administrative law judge in making the final determination.

22 (b) *If at least two medical opinions based on competent medical*
23 *evidence disagree as to the percentage of functional impairment, such*
24 *matter may be referred by the administrative law judge to an independent*
25 *health care provider who shall be agreed upon by the parties. Where the*
26 *parties cannot agree, an independent healthcare provider shall be*
27 *selected by the administrative law judge. The health care provider agreed*
28 *to by the parties or selected by the administrative law judge pursuant to*
29 *this section shall issue an opinion regarding the employee's functional*
30 *impairment which shall be considered by the administrative law judge in*
31 *making the final determination*

32 Sec. 15. K.S.A. 44-520 is hereby amended to read as follows: 44-
33 520. ~~Except as otherwise provided in this section, Proceedings for~~
34 ~~compensation under the workers compensation act shall not be~~
35 ~~maintainable unless notice of the accident, stating the time and place and~~
36 ~~particulars thereof, and the name and address of the person injured, is~~
37 ~~given to the employer within 10 days after the date of the accident, except~~
38 ~~that actual knowledge of the accident by the employer or the employer's~~
39 ~~duly authorized agent shall render the giving of such notice unnecessary.~~
40 ~~The ten day notice provided in this section shall not bar any proceeding~~
41 ~~for compensation under the workers compensation act if the claimant~~
42 ~~shows that a failure to notify under this section was due to just cause,~~
43 ~~except that in no event shall such a proceeding for compensation be~~

(a)

~~maintained unless the notice required by this section is given to the employer within 75 days after the date of the accident unless (a) actual knowledge of the accident by the employer or the employer's duly authorized agent renders the giving of such notice unnecessary as provided in this section, (b) the employer was unavailable to receive such notice as provided in this section, or (c) the employee was physically unable to give such notice~~ injury by accident or repetitive trauma is given to the employer within 30 days of the date of accident or the date of injury by repetitive trauma. Notice may be given orally or in writing.

(1) Where notice is provided orally, if the employer has designated an individual or department to whom notice must be given and such designation has been communicated in writing to the employee, notice to any other individual or department shall be insufficient under this section. If the employer has not designated an individual or department to whom notice must be given, notice must be provided to a supervisor or manager.

(2) Where notice is provided in writing, notice must be sent to a supervisor or manager at the employee's principal location of employment. The burden shall be on the employee to prove that such notice was actually received by the employer.

(3) The notice, whether provided orally or in writing, shall include the time, date, place, person injured and particulars of such injury. It must be apparent from the content of the notice that the employee is claiming benefits under the workers compensation act or has suffered a work-related injury.

(b) The notice required by subsection (a) shall be waived if the employee proves that (1) the employer or the employer's duly authorized agent had actual knowledge of the injury; (2) the employer or the employer's duly authorized agent was unavailable to receive such notice within the 30-day period as provided in subsection (a); or (3) the employee was physically unable to give such notice.

(c) For the purposes of calculating the notice period proscribed in subsection (a), weekends shall be included.

Sec. 16. K.S.A. 2010 Supp. 44-523 is hereby amended to read as follows: 44-523. (a) The director, administrative law judge or board shall not be bound by technical rules of procedure, but shall give the parties reasonable opportunity to be heard and to present evidence, insure the employee and the employer an expeditious hearing and act reasonably without partiality.

(b) Whenever a party files an application for hearing pursuant to K.S.A. 44-534, and amendments thereto, the matter shall be assigned to an administrative law judge for hearing and the administrative law judge shall set a terminal date to require the claimant to submit all evidence in

calendar

; within 10 calendar days after the employee's last day of employment; or within 10 calendar days after the employee seeks medical treatment for the injury, as defined in subsection (e) of K.S.A. 44-510h, and amendments thereto. Notice shall be provided within a time period never to exceed 30 calendar days of the date of accident or the date of injury by repetitive trauma.

, witnesses, if any,

1 support of the claimant's claim no later than 30 days after the first full
2 hearing before the administrative law judge and to require the respondent
3 to submit all evidence in support of the respondent's position no later than
4 30 days thereafter. An extension of the foregoing time limits shall be
5 granted if all parties agree. An extension of the foregoing time limits may
6 also be granted:

7 (1) If the employee is being paid temporary or permanent total
8 disability compensation;

9 (2) for medical examination of the claimant if the party requesting
10 the extension explains in writing to the administrative law judge facts
11 showing that the party made a diligent effort but was unable to have a
12 medical examination conducted prior to the submission of the case by the
13 claimant but then only if the examination appointment was set and notice
14 of the appointment sent prior to submission by the claimant; or

15 (3) on application for good cause shown.

16 (c) When all parties have submitted the case to an administrative law
17 judge for an award, the administrative law judge shall issue an award
18 within 30 days. The administrative law judge shall not stay a decision due
19 to the absence of a submission letter. When the award is not entered in 30
20 days, any party to the action may notify the director that an award is not
21 entered and the director shall assign the matter to an assistant director or
22 to a special administrative law judge who shall enter an award forthwith
23 based on the evidence in the record, or the director, on the director's own
24 motion, may remove the case from the administrative law judge who has
25 not entered an award within 30 days following submission by the party
26 and assign it to an assistant director or to a special administrative law
27 judge for immediate decision based on the evidence in the record.

28 (d) Not less than 10 days prior to the first full hearing before an
29 administrative law judge, the administrative law judge shall conduct a
30 prehearing settlement conference for the purpose of obtaining stipulations
31 from the parties, determining the issues and exploring the possibility that
32 the parties may resolve those issues and reach a settlement prior to the
33 first full hearing.

34 (e) (1) If a party or a party's attorney believes that the administrative
35 law judge to whom a case is assigned cannot afford that party a fair
36 hearing in the case, the party or attorney may file a motion for change of
37 administrative law judge. A party or a party's attorney shall not file more
38 than one motion for change of administrative law judge in a case. The
39 administrative law judge shall promptly hear the motion informally upon
40 reasonable notice to all parties who have appeared in the case.
41 Notwithstanding the provisions of K.S.A. 44-552, and amendments
42 thereto, the administrative law judge shall decide, in the administrative
43 law judge's discretion, whether or not the hearing of such motion shall be

1 taken down by a certified shorthand reporter. If the administrative law
 2 judge disqualifies the administrative law judge's self, the case shall be
 3 assigned to another administrative law judge by the director. If the
 4 administrative law judge refuses to disqualify the administrative law
 5 judge's self, the party seeking a change of administrative law judge may
 6 file in the district court of the county in which the accident *or injury*
 7 occurred the affidavit provided in subsection (e)(2). If an affidavit is to be
 8 filed in the district court, it shall be filed within 10 days.

9 (2) If a party or a party's attorney files an affidavit alleging any of
 10 the grounds specified in subsection (e)(3), the chief judge shall at once
 11 determine, or refer the affidavit to another district court judge for prompt
 12 determination of, the legal sufficiency of the affidavit. If the affidavit is
 13 filed in a district court in which there is no other judge who is qualified to
 14 hear the matter, the chief judge shall at once notify the departmental
 15 justice for the district and request the appointment of another district
 16 judge to determine the legal sufficiency of the affidavit. If the affidavit
 17 is found to be legally sufficient, the district court judge shall order the
 18 director to assign the case to another administrative law judge or to an
 19 assistant director.

20 (3) Grounds which may be alleged as provided in subsection (e)(2)
 21 for change of administrative law judge are that:

22 (A) The administrative law judge has been engaged as counsel in the
 23 case prior to the appointment as administrative law judge.

24 (B) The administrative law judge is otherwise interested in the case.

25 (C) The administrative law judge is related to either party in the
 26 case.

27 (D) The administrative law judge is a material witness in the case.

28 (E) The party or party's attorney filing the affidavit has cause to
 29 believe and does believe that on account of the personal bias, prejudice or
 30 interest of the administrative law judge such party cannot obtain a fair
 31 and impartial hearing. Such affidavit shall state the facts and the reasons
 32 for the belief that bias, prejudice or an interest exists.

33 (4) In any affidavit filed pursuant to subsection (e)(2), the recital of
 34 previous rulings or decisions by the administrative law judge on legal
 35 issues or concerning prior motions for change of administrative law judge
 36 filed by counsel or such counsel's law firm, pursuant to this subsection,
 37 shall not be deemed legally sufficient for any belief that bias or
 38 prejudice exists.

39 (f) (1) ~~Any~~In any claim that has not proceeded to ~~final~~a regular
 40 hearing, a settlement hearing, or an agreed award under the workers
 41 compensation act within ~~five~~three years from the date of filing an
 42 application for hearing pursuant to K.S.A. 44-534, and amendments
 thereto, ~~shall be dismissed by the administrative law judge for lack of~~

1 ~~prosecution~~ the employer shall be permitted to file with the division an
 2 application for dismissal based on lack of prosecution. The matter shall
 3 be set for hearing with notice to the claimant's attorney, if the claimant is
 4 represented, or to the claimant's last known address. The administrative
 5 law judge may grant an extension for good cause shown, which shall be
 6 conclusively presumed in the event that the claimant has not reached
 7 maximum medical improvement, provided such motion to extend is filed
 8 prior to the ~~five~~three year limitation provided for herein. If the claimant
 9 cannot establish good cause, the claim shall be dismissed with prejudice
 10 by the administrative law judge for lack of prosecution. Such dismissal
 11 shall be considered a final disposition ~~of~~ the claim for purposes of
 12 employer reimbursement from the fund.

13 (2) In any claim which has not proceeded to regular hearing within
 14 one year from the date of a preliminary award denying compensability of
 15 the claim, the employer shall be permitted to file with the division an
 16 application for dismissal based on lack of prosecution. The matter shall
 17 be set for hearing with notice to the claimant's attorney, if the claimant is
 18 represented, or to the claimant's last known address. Unless the claimant
 19 can prove a good faith reason for delay, the claim shall be dismissed with
 20 prejudice by the administrative law judge. Such dismissal shall be
 21 considered a final disposition ~~of~~ the claim for purposes of employer
 22 reimbursement from the fund.

23 (3) This section shall not affect any future benefits which have been
 24 left open upon proper application by an award or settlement.

25 Sec. 17. K.S.A. 44-525 is hereby amended to read as follows: 44-
 26 525. (a) Every finding or award of compensation shall be in writing
 27 signed and acknowledged by the administrative law judge and shall
 28 specify the amount due and unpaid by the employer to the employee up to
 29 the date of the award, if any, and the amount of the payments thereafter to
 30 be paid by the employer to the employee, if any, and the length of time
 31 such payment shall continue. No award shall include the right to future
 32 medical treatment, unless it is proved by the claimant that it is more
 33 probable than not that future medical treatment, as defined in K.S.A. 44-
 34 510h(e), and amendments thereto, will be required as a result of the
 35 work-related injury. The award of the administrative law judge shall be
 36 effective the day following the date noted in the award.

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

at a full hearing on

pursuant to subsection (b) of K.S.A. 44-534a, and amendments thereto

at a full hearing on

pursuant to subsection (b) of K.S.A. 44-534a, and amendments thereto

(c) In the event the employee has been overpaid temporary total disability benefits as described in subsection (b) of K.S.A. 44-534a, and amendments thereto, and the employee is entitled to additional disability benefits, the administrative law judge shall provide for the application of a credit against such benefits. The credit shall first be applied to the final week of any such additional disability benefit award and then to each preceding week until the credit is exhausted.

Sec. 18. K.S.A. 44-528 is hereby amended to read as follows: 44-528. (a) ~~Any award or modification thereof agreed upon by the parties, Except lump-sum settlements approved by the director or administrative law judge, whether the award provides for compensation into the future or whether it does not, any award or modification thereof~~ may be reviewed by the administrative law judge for good cause shown upon the application of the employee, employer, dependent, insurance carrier or any other interested party. In connection with such review, the administrative law judge may appoint one or two health care providers to examine the employee and report to the administrative law judge. The administrative law judge shall hear all competent evidence offered and if the administrative law judge finds that the award has been obtained by fraud or undue influence, that the award was made without authority or as a result of serious misconduct, that the award is excessive or inadequate or that the functional impairment or work disability of the employee has increased or diminished, the administrative law judge may modify such award, or reinstate a prior award, ~~upon such terms as may be just, by increasing or diminishing the compensation subject to the limitations provided in the workers compensation act pursuant to the provisions set forth in K.S.A. 44-510b, 44-510c, 44-510d or 44-510e, and amendments thereto, as may be applicable.~~

(b) ~~If the administrative law judge finds that the employee has returned to work for the same employer in whose employ the employee was injured or for another employer and is earning or is capable of earning the same or higher wages than the employee did at the time of the accident, or is capable of gaining an income from any trade or employment which is equal to or greater than the wages the employee was earning at the time of the accident, or finds that the employee has absented and continues to be absent so that a reasonable examination cannot be made of the employee by a health care provider selected by the employer, or has departed beyond the boundaries of the United States, the administrative law judge may modify the award and reduce compensation or may cancel the award and end the compensation.~~

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

(d) Any modification of an award under this section on the basis that

1 the functional impairment or work disability of the employee has
2 increased or diminished shall be effective as of the date that the increase
3 or diminishment actually occurred, except that in no event shall the
4 effective date of any such modification be more than six months prior to
5 the date the application was made for review and modification under this
6 section.

7 Sec. 19. K.S.A. 44-531 is hereby amended to read as follows: 44-

8 531. (a) Where all parties agree to the payment of all or any part of
9 compensation due under the workers compensation act or under any
10 award or judgment, and where it has been determined at a hearing before
11 the administrative law judge that it is for the best interest of the injured
12 employee or the dependents of a deceased employee, or that it will avoid
13 undue expense, litigation or hardship to any party or parties, the
14 administrative law judge may permit the employer to redeem all or any
15 part of the employer's liability under the workers compensation act by the
16 payment of compensation in a lump-sum; ~~except that no agreement for~~
17 ~~payment of compensation in a lump-sum shall be approved for nine~~
18 ~~months after an employee has returned to work in cases in which the~~
19 ~~employee, who would otherwise be entitled to compensation for work~~
20 ~~disability, is not entitled to work disability compensation because of~~
21 ~~being returned to work at a comparable wage by the employer who~~
22 ~~employed the worker at the time of the injury giving rise to the claim~~
23 ~~being settled.~~ The employer shall be entitled to an 8% discount except as
24 provided in subsection (a) of K.S.A. 44-510b, and amendments thereto on
25 the amount of any such lump-sum payment that is not yet due at the time
26 of the award. Upon paying such lump-sum the employer shall be released
27 and discharged of and from all liability under the workers compensation
28 act for that portion of the employer's liability redeemed under this
29 section.

30 (b) No lump-sum awards, unless agreed to by the parties, shall be
31 rendered under the workers compensation act except: (1) As provided in
32 subsection (a) of this section, (2) as provided in subsection (a) K.S.A. 44-
33 510b, and amendments thereto, (3) in cases involving compensation due
34 the employee at the time the award is rendered as provided in K.S.A. 44-
35 525, and amendments thereto and in cases of past due compensation as
36 provided in K.S.A. 44-529, and amendments thereto.

37 (c) *The parties, by agreement and with approval of an*
38 *administrative law judge, may enter into a compromise lump-sum*
39 *settlement in either permanent total or permanent partial disability cases*
40 *which prorates the lump-sum settlement over the life expectancy of the*
41 *injured worker. When such an agreement has been approved, neither the*
42 *weekly compensation rate paid throughout the case nor the maximum*
43 *statutory weekly rate applicable to the injury shall apply. No*

1 compensation rate shall exceed the maximum statutory weekly rate as of
 2 the date of the injury. Instead, the prorated rate set forth in the approved
 3 settlement documents shall control and become the rate for that case.
 4 This section shall be retroactive in effect.

5 Sec. 20. K.S.A. 44-534a is hereby amended to read as follows: 44-

6 534a. (a) (1) After an application for a hearing has been filed pursuant to
 7 K.S.A. 44-534, and amendments thereto, the employee or the employer
 8 may make application for a preliminary hearing, in such form as the
 9 director may require, on the issues of the furnishing of medical treatment

10 and the payment of temporary total disability compensation. At least
 11 seven days prior to filing an application for a preliminary hearing, the
 12 applicant shall give written notice to the adverse party of the intent to file
 13 such an application. Such notice of intent shall contain a specific
 14 statement of the benefit change being sought that is to be the subject of
 15 the requested preliminary hearing. If the parties do not agree to the
 16 change of benefits within the seven-day period, the party seeking a
 17 change in benefits may file an application for preliminary hearing which
 18 shall be accompanied by a copy of the notice of intent and the applicant's
 19 certification that the notice of intent was served on the adverse party or
 20 that party's attorney and that the request for a benefit change has either
 21 been denied or was not answered within seven days after service. Copies
 22 of medical reports or other evidence which the party intends to produce as
 23 exhibits supporting the change of benefits shall be included with the
 24 application. The director shall assign the application to an administrative
 25 law judge who shall set the matter for a preliminary hearing and shall
 26 give at least seven days' written notice by mail to the parties of the date
 27 set for such hearing.

28 (2) Such preliminary hearing shall be summary in nature and shall
 29 be held by an administrative law judge in any county designated by the
 30 administrative law judge, and the administrative law judge shall exercise
 31 such powers as are provided for the conduct of full hearings on claims
 32 under the workers compensation act. Upon a preliminary finding that the
 33 injury to the employee is compensable and in accordance with the facts
 34 presented at such preliminary hearing, the administrative law judge may
 35 make a preliminary award of medical compensation and temporary total
 36 disability compensation to be in effect pending the conclusion of a full
 37 hearing on the claim, except that if the employee's entitlement to medical
 38 compensation or temporary total disability compensation is disputed or
 39 there is a dispute as to the compensability of the claim, no preliminary
 40 award of benefits shall be entered without giving the employer the
 41 opportunity to present evidence, including testimony, on the disputed
 42 issues. A finding with regard to a disputed issue of whether the employee
 suffered an ~~accidental~~ accident, repetitive trauma or resulting injury,

or temporary partial

1 whether the injury arose out of and in the course of the employee's
2 employment, whether notice is given ~~or claim timely made~~, or whether
3 certain defenses apply, shall be considered jurisdictional, and subject to
4 review by the board. Such review by the board shall not be subject to
5 judicial review. If an appeal from a preliminary order is perfected under
6 this section, such appeal shall not stay the payment of medical
7 compensation and temporary total disability compensation from the date
8 of the preliminary award. If temporary total compensation is awarded,
9 such compensation may be ordered paid from the date of filing the
10 application, except that if the administrative law judge finds from the
11 evidence presented that there were one or more periods of temporary total
12 disability prior to such filing date, temporary total compensation may be
13 ordered paid for all periods of temporary total disability prior to such date
14 of filing. The decision in such preliminary hearing shall be rendered
15 within five days of the conclusion of such hearing. Except as provided in
16 this section, no such preliminary findings or preliminary awards shall be
17 appealable by any party to the proceedings, and the same shall not be
18 binding in a full hearing on the claim, but shall be subject to a full
19 presentation of the facts.

20 (b) If compensation in the form of medical benefits or temporary
21 total disability benefits has been paid by the employer or the employer's
22 insurance carrier either voluntarily or pursuant to an award entered under
23 this section and, upon a full hearing on the claim, the amount of
24 compensation to which the employee is entitled is found to be less than
25 the amount of compensation paid or is totally disallowed, the employer
26 and the employer's insurance carrier shall be reimbursed from the
27 workers compensation fund established in K.S.A. 44-566a, and
28 amendments thereto, for all amounts of compensation so paid which are
29 in excess of the amount of compensation the employee is entitled to less
30 any amount deducted from additional disability benefits due the
31 employee pursuant to subsection (c) of K.S.A. 44-525, and amendments
32 thereto, as determined in the full hearing on the claim. The director shall
33 determine the amount of compensation paid by the employer or insurance
34 carrier which is to be reimbursed under this subsection, and the director
35 shall certify to the commissioner of insurance the amount so determined.
36 Upon receipt of such certification, the commissioner of insurance shall
37 cause payment to be made to the employer or the employer's insurance
38 carrier in accordance therewith. No reimbursement shall be certified
39 unless the request is made by the employer or employer's insurance
40 carrier within one year of the final award.

41 Sec. 21. K.S.A. 44-536 is hereby amended to read as follows: 44-
42 536. (a) With respect to any and all proceedings in connection with any
43 initial or original claim for compensation, no claim of any attorney for

1 services rendered in connection with the securing of compensation for an
2 employee or the employee's dependents, whether secured by agreement,
3 order, award or a judgment in any court shall exceed a reasonable amount
4 for such services or 25% of the amount of compensation recovered and
5 paid, whichever is less, in addition to actual expenses incurred, and
6 subject to the other provisions of this section. Except as hereinafter
7 provided in this section, in death cases, total disability and partial
8 disability cases, the amount of attorney fees shall not exceed 25% of the
9 sum which would be due under the workers compensation act beyond 415
10 weeks of permanent total disability based upon the employee's average
11 gross weekly wage prior to the date of the accident and subject to the
12 maximum weekly benefits provided in K.S.A. 44-510c, and amendments
13 thereto.

14 (b) All attorney fees in connection with the initial or original claim
15 for compensation shall be fixed pursuant to a written contract between the
16 attorney and the employee or the employee's dependents, which shall be
17 subject to approval by the director in accordance with this section. Every
18 attorney, whether the disposition of the original claim is by agreement,
19 settlement, award, judgment or otherwise, shall file the attorney contract
20 with the director for review in accordance with this section. The director
21 shall review each such contract and the fees claimed thereunder as
22 provided in this section and shall approve such contract and fees only if
23 both are in accordance with all provisions of this section. Any claims for
24 attorney fees not in excess of the limits provided in this section and
25 approved by the director shall be enforceable as a lien on the
26 compensation due or to become due. The director shall specifically and
27 individually review each claim of an attorney for services rendered under
28 the workers compensation act in each case of a settlement agreement
29 under K.S.A. 44-521, and amendments thereto or a lump-sum payment
30 under K.S.A. 44-531, and amendments thereto as to the reasonableness
31 thereof. In reviewing the reasonableness of such claims for attorney fees,
32 the director shall consider the other provisions of this section and the
33 following:

34 (1) The written offers of settlement received by the employee prior
35 to execution of a written contract between the employee and the attorney;
36 the employer shall attach to the settlement worksheet copies of any
37 written offers of settlement which were sent to the employee before the
38 employer was aware that the employee had hired an attorney;

39 (2) the time and labor required, the novelty and difficulty of the
40 questions involved and the skill requisite to perform the legal services
41 properly;

42 (3) the likelihood, if apparent to the employee or the employee's
dependents, that the acceptance of the particular case will preclude other

or injury

1 employment by the attorney;

2 (4) the fee customarily charged in the locality for similar legal
3 services;

4 (5) the amount of compensation involved and the results obtained;

5 (6) the time limitations imposed by the employee, by the employee's
6 dependents or by the circumstances;

7 (7) the nature and length of the professional relationship with the
8 employee or the employee's dependents; and

9 (8) the experience, reputation and ability of the attorney or attorneys
10 performing the services.

11 (c) No attorney fees shall be charged with respect to compensation
12 for medical expenses, except where an allowance is made for proposed or
13 future treatment as a part of a compromise settlement. No attorney fees
14 shall be charged with respect to vocational rehabilitation benefits.

15 (d) No attorney fees shall be charged in connection with any
16 temporary total disability compensation unless the payment of such
17 compensation in the proper amount is refused, or unless such
18 compensation is terminated by the employer and the payment of such
19 compensation is obtained or reinstated by the efforts of the attorney,
20 whether by agreement, settlement, award or judgment.

21 (e) With regard to any claim where there is no dispute as to any of
22 the material issues prior to representation of the claimant or claimants by
23 an attorney, or where the amount to be paid for compensation does not
24 exceed the written offer made to the claimant or claimants by the
25 employer prior to execution of a written contract between the employee
26 and an attorney, the fees to any such attorney shall not exceed either the
27 sum of \$250 or a reasonable fee for the time actually spent by the
28 attorney, as determined by the director, whichever is greater, exclusive of
29 reasonable attorney fees for any representation by such attorney in
30 reference to any necessary probate proceedings. With regard to any claim
31 where the amount to be paid for compensation does exceed the written
32 offer made prior to representation, fees for services rendered by an
33 attorney shall not exceed the lesser of (1) a reasonable amount for such
34 services; (2) an amount equal to the total of 50% of that portion of the
35 amount of compensation recovered and paid, which is in excess of the
36 amount of compensation offered to the employee by the employer prior to
37 the execution of a written contract between the employee and the
38 attorney; or (3) 25% of the total amount of compensation recovered and
39 paid as described in subsection (a).

40 (f) All attorney fees for representation of an employee or the
41 employee's dependents shall be only recoverable from compensation
42 actually paid to such employee or dependents, except as specifically
43 provided otherwise in subsection (g) and (h).

(g) In the event any attorney renders services to an employee or the employee's dependents, subsequent to the ultimate disposition of the initial and original claim, and in connection with an application for review and modification, a hearing for additional medical benefits, an application for penalties or otherwise, such attorney shall be entitled to reasonable attorney fees for such services, in addition to attorney fees received or which the attorney is entitled to receive by contract in connection with the original claim, and such attorney fees shall be awarded by the director on the basis of the reasonable and customary charges in the locality for such services and not on a contingent fee basis.

(1) If the services rendered under this subsection by an attorney result in an additional award of disability compensation, the attorney fees shall be paid from such amounts of disability compensation.

(2) If such services involve no additional award of disability compensation, but result in an additional award of medical compensation, penalties, or other benefits, the director shall fix the proper amount of such attorney fees in accordance with this subsection and such fees shall be paid by the employer or the workers compensation fund, if the fund is liable for compensation pursuant to K.S.A. 44-567, and amendments thereto, to the extent of the liability of the fund.

(3) If the services rendered herein result in a denial of additional compensation, ~~the director may authorize a fee to be paid by the respondent~~ *penalties, or other benefits, and it is determined that the attorney engaged in frivolous prosecution of the claim, the employer and insurance carrier shall not be liable for any portion of the attorney fees incurred for such services.*

(h) Any and all disputes regarding attorney fees, whether such disputes relate to which of one or more attorneys represents the claimant or claimants or is entitled to the attorney fees, or a division of attorney fees where the claimant or claimants are or have been represented by more than one attorney, or any other disputes concerning attorney fees or contracts for attorney fees, shall be heard and determined by the administrative law judge, after reasonable notice to all interested parties and attorneys.

(i) After reasonable notice and hearing before the administrative law judge, any attorney found to be in violation of any provision of this section shall be required to make restitution of any excess fees charged.

Sec. 22. K.S.A. 44-5a01 is hereby amended to read as follows: 44-5a01. (a) Where the employer and employee or workman are subject by law or election to the provisions of the workmen's compensation act, the disablement or death of an employee or workman resulting from an occupational disease as defined in this section shall be treated as the happening of an injury by accident, and the employee or workman or, in

1 case of death, his dependents shall be entitled to compensation for such
2 disablement or death resulting from an occupational disease, in
3 accordance with the provisions of the workmen's compensation act as in
4 cases of injuries by accident which are compensable thereunder, except as
5 specifically provided otherwise for occupational diseases. *In no*
6 *circumstances shall an occupational disease be construed to include*
7 *injuries caused by repetitive trauma as defined in K.S.A. 44-508, and*
8 *amendments thereto.*

9 (b) "Occupational disease" shall mean only a disease arising out of
10 and in the course of the employment resulting from the nature of the
11 employment in which the employee was engaged under such employer,
12 and which was actually contracted while so engaged. "Nature of the
13 employment" shall mean, for purposes of this section, that to the
14 occupation, trade or employment in which the employee was engaged,
15 there is attached a particular and peculiar hazard of such disease which
16 distinguishes the employment from other occupations and employments,
17 and which creates a hazard of such disease which is in excess of the
18 hazard of such disease in general. The disease must appear to have had its
19 origin in a special risk of such disease connected with the particular type
20 of employment and to have resulted from that source as a reasonable
21 consequence of the risk. Ordinary diseases of life and conditions to which
22 the general public is or may be exposed to outside of the particular
23 employment, and hazards of diseases and conditions attending
24 employment in general, shall not be compensable as occupational
25 diseases: ~~Provided, except~~ that compensation shall not be payable for
26 pulmonary emphysema or other types of emphysema unless it is proved,
27 by clear and convincing medical evidence to a reasonable probability, that
28 such emphysema was caused, solely and independently of all other
29 causes, by the employment with the employer against whom the claim is
30 made, except that, if it is proved to a reasonable medical probability that
31 an existing emphysema was aggravated and contributed to by the
32 employment with the employer against whom the claim is made,
33 compensation shall be payable for the resulting condition of the
34 workman, but only to the extent such condition was so contributed to and
35 aggravated by the employment.

36 (c) In no case shall an employer be liable for compensation under
37 this section unless disablement results within one (1) year or death results
38 within three (3) years in case of silicosis, or one (1) year in case of any
39 other occupational disease, after the last injurious exposure to the hazard
40 of such disease in such employment, or, in case of death, unless death
41 follows continuous disability from such disease, commencing within the
42 period above limited, for which compensation has been paid or awarded
43 or timely claim made as provided in the workmen's compensation act,

1 and results within seven (7) years after such last exposure. Where
 2 payments have been made on account of any disablement from which
 3 death shall thereafter result such payments shall be deducted from the
 4 amount of liability provided by law in case of death. The time limit
 5 prescribed by this section shall not apply in the case of an employee
 6 whose disablement or death is due to occupational exposure to ionizing
 7 radiation.

8 (d) Where an occupational disease is aggravated by any disease or
 9 infirmity, not itself compensable, or where disability or death from any
 10 other cause, not itself compensable, is aggravated, prolonged, accelerated
 11 or in any wise contributed to by an occupational disease, the
 12 compensation payable shall be reduced and limited to such proportion
 13 only of the compensation that would be payable if the occupational
 14 disease were the sole cause of the disability or death, as such
 15 occupational disease, as a causative factor, bears to all the causes of such
 16 disability or death, such reduction in compensation to be effected by
 17 reducing the number of weekly or monthly payments or the amounts of
 18 such payments, as under the circumstances of the particular case may be
 19 for the best interest of the claimant or claimants.

20 (e) No compensation for death from an occupational disease shall be
 21 payable to any person whose relationship to the deceased employee or
 22 workman arose subsequent to the beginning of the first compensable
 23 disability save only to afterborn children.

24 (f) The provisions of K.S.A. 44-570, *and amendments thereto*, shall
 25 apply in case of an occupational disease.

26 ~~Sec. 23~~ K.S.A. 44-503a, 44-510a, 44-510c, 44-510d, 44-510e, 44-
 27 510f, 44-515, 44-516, 44-520, 44-520a, 44-525, 44-528, 44-531, 44-534a,
 28 44-536 and 44-5a01 and K.S.A. 2010 Supp. 44-501, 44-508, 44-510b, 44-
 29 510h, 44-510k, 44-511, ~~and 44-523~~ are hereby repealed.

30 Sec. ~~24~~ This act shall take effect and be in force from and after its
 31 publication in the statute book.

SEE ATTACHMENT A
and renumber remaining sections
accordingly

44-532a,

, 44-552 and 44-596

ATTACHMENT A

Sec. 23. K.S.A. 44-532a is hereby amended to read as follows: 44-532a. (a) If an employer has no insurance to secure the payment of compensation *or has insufficiently funded a self-insurance bond*, as provided in subsection (b) (1) and (2) of K.S.A. 44-532 and amendments thereto, and such employer is financially unable to pay compensation to an injured worker as required by the workers compensation act, or such employer cannot be located and required to pay such compensation, the injured worker may apply to the director for an award of the compensation benefits, including medical compensation, to which such injured worker is entitled, to be paid from the workers compensation fund. Whenever a worker files an application under this section, the matter shall be assigned to an administrative law judge for hearing. If the administrative law judge is satisfied as to the existence of the conditions prescribed by this section, the administrative law judge may make an award, or modify an existing award, and prescribe the payments to be made from the workers compensation fund as provided in K.S.A. 44-569 and amendments thereto. The award shall be certified to the commissioner of insurance, and upon receipt thereof, the commissioner of insurance shall cause payment to be made to the worker in accordance therewith.

(b) The commissioner of insurance, acting as administrator of the workers compensation fund, shall have a cause of action against the employer for recovery of any amounts paid from the workers compensation fund pursuant to this section. Such action shall be filed in the district court of the county in which the accident occurred or where the contract of employment was entered into.

New Sec. 24. (a) An insurer of self-insured employer may provide the following notice to an insured worker on or with a check for temporary disability benefits:

Warning: Acceptance of employment with a different employer that requires the performance of activities you have state you cannot perform because of the injury for which you are receiving temporary disability benefits could constitute fraud could result in loss of future benefits and restitution of prior workers compensation award and benefits paid.

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

New Sec. 25. (a) Any person who is not required to be covered under a workers compensation insurance policy or other plan for the payment of workers compensation may execute an affidavit of exempt status under the workers compensation act. The affidavit shall be a form prescribed by the secretary of labor. The affidavit shall be available on the web site of the department of labor.

(b) Execution of the affidavit shall establish a rebuttable presumption that the executor is not an employee for purposes of the workers compensation act and that an individual or company possessing the affidavit is in compliance and therefore shall not be responsible for workers compensation claims made by the executor.

(c) The execution of an affidavit shall not affect the rights or coverage of any employee of the individual executing the affidavit.

(d) (1) Knowingly providing false information on a notarized affidavit of exempt status under the workers compensation act shall constitute a misdemeanor punishable by a fine not to exceed \$1,000.

(2) Affidavits shall conspicuously state on the front thereof in at least 10 point, bold-faced print that it is a crime to falsify information on the form.

(3) The secretary of labor shall immediately notify the workers compensation fraud unit in the department of labor of any violations or suspected violations of this section. The secretary shall cooperate with the fraud unit in any investigation involving affidavits executed pursuant to this section.

(e) The department of labor shall have the power to adopt all reasonable rules and regulations necessary to enforce this provision.

House Commerce & Economic
Development Committee

Date: 02/11/2011

Attachment #: 1-51

Sec. 26. K.S.A. 2010 Supp. 44-552 is hereby amended to read as follows: 44-552. (a) The director with the approval of the secretary of labor shall at each hearing under the workers compensation act appoint a certified shorthand reporter, who may be within the classified service of the Kansas civil service act, to attend each hearing where testimony is introduced, and preserve a complete record of all oral or documentary evidence introduced and all proceedings had at such hearing unless such appointment is waived by mutual agreement. At the conclusion of the hearing in any case, if neither party has requested opportunity to file briefs, the administrative law judge may read into the record for certification and filing in the office of the director such stipulations, findings, rulings or orders the administrative law judge deems expedient to the early disposition of the case. If the administrative law judge uses such procedure, with the consent of the parties, no transcript of the record of the hearing shall be made, except that part which is read into the record by the administrative law judge.

(b) All testimony introduced and proceedings had in hearings shall be taken down by the certified shorthand reporter, and if an action for review is commenced or if the director, or either party or the best interests of the administration of justice, so instructs, the certified shorthand reporter shall transcribe the certified shorthand reporter's notes of such hearing. If an action for review is commenced, the cost of preparing a transcript shall be paid as provided by K.S.A. 77-620 and amendments thereto. If no action for review is commenced, the cost of preparing a transcript shall be taxed as costs in the case at the discretion of the director in accordance with fair and customary rates charged in the state of Kansas. All official notes of such certified shorthand reporters shall be preserved and filed in the office of the director. Any transcript prepared as above provided and duly certified shall be received as evidence by the board and by any court with the same effect as if the certified shorthand reporter were present and testified to the records so certified.

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

(d) The certified short hand reporter's fee shall be taxed to the division of worker's compensation if a fee is incurred and no record taken.

(e) Any fee charged by a language translator for services provided to the claimant during the course of pursuing a claim under the workers compensation act shall be paid by the claimant.

New Sec. 27. (a) If any provisions of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this act which can be given effect without the invalid provision or application, and to this end the provisions of this act are severable.

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

HOUSE BILL No. 2134

By Committee on Commerce and Economic Development

1-31

AN ACT concerning workers compensation; amending K.S.A. 44-503a, 44-510c, 44-510d, 44-510e, 44-510f, 44-515, 44-516, 44-520, 44-525, 44-528, 44-531, 44-534a, 44-536 and 44-5a01 and K.S.A. 2010 Supp. 44-501, 44-508, 44-510b, 44-510h, 44-510k, 44-511 and 44-523 and repealing the existing sections; also repealing K.S.A. 44-510a and 44-520a.

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

New Section 1. (a) It is the intent of the legislature that the workers compensation act shall be liberally construed only for the purpose of bringing employers and employees within the provisions of the act. The provisions of the workers compensation act shall be applied impartially to both employers and employees in cases arising thereunder.

(b) If in any employment to which the workers compensation act applies, an employee suffers personal injury by accident, repetitive trauma or occupational disease arising out of and in the course of employment, the employer shall be liable to pay compensation to the employee in accordance with the provisions of the workers compensation act.

(c) The burden of proof shall be on the claimant to establish the claimant's right to an award of compensation and to prove the various conditions on which the claimant's right depends. In determining whether the claimant has satisfied this burden of proof, the tier of fact shall consider the whole record.

(d) Except as provided in the workers compensation act, no employer, or other employee of such employer, shall be liable for any injury, whether by accident, repetitive trauma, or occupational disease, for which compensation is recoverable under the workers compensation act nor shall an employer be liable to any third party for any injury or death of an employee which was caused under circumstances creating a legal liability against a third party and for which workers compensation is payable by such employer.

Sec. 2. K.S.A. 2010 Supp. 44-501 is hereby amended to read as follows: 44-501. ~~(a) If in any employment to which the workers compensation act applies, personal injury by accident arising out of and in the course of employment is caused to an employee, the employer shall~~

1 be liable to pay compensation to the employee in accordance with the
2 provisions of the workers compensation act. In proceedings under the
3 workers compensation act, the burden of proof shall be on the claimant to
4 establish the claimant's right to an award of compensation and to prove
5 the various conditions on which the claimant's right depends. In
6 determining whether the claimant has satisfied this burden of proof, the
7 trier of fact shall consider the whole record.

8 (b) ~~Except as provided in the workers compensation act, no~~
9 ~~employer, or other employee of such employer, shall be liable for any~~
10 ~~injury for which compensation is recoverable under the workers~~
11 ~~compensation act nor shall an employer be liable to any third party for~~
12 ~~any injury or death of an employee which was caused under~~
13 ~~circumstances creating a legal liability against a third party and for which~~
14 ~~workers compensation is payable by such employer.~~

15 (c) ~~The employee shall not be entitled to recover for the aggravation~~
16 ~~of a preexisting condition, except to the extent that the work-related~~
17 ~~injury causes increased disability. Any award of compensation shall be~~
18 ~~reduced by the amount of functional impairment determined to be~~
19 ~~preexisting.~~

20 (d) ~~(1) If the injury to the employee results from the employee's~~
21 ~~deliberate intention to cause such injury; or from the employee's willful~~
22 ~~failure to use a guard or protection against accident required pursuant to~~
23 ~~any statute and provided for the employee, or a reasonable and proper~~
24 ~~guard and protection voluntarily furnished the employee by the employer,~~
25 ~~any compensation in respect to that injury shall be disallowed.~~

26 ~~(2)(a) Compensation for an injury shall be disallowed if such injury~~
27 ~~to the employee results from:~~

28 ~~(1) The employee's deliberate intention to cause such injury;~~

29 ~~(2) the employee's willful failure to use a guard or protection~~
30 ~~against accident which is required pursuant to any statute and provided~~
31 ~~for the employee; or~~

32 ~~(3) the employee's willful failure to use a reasonable and proper~~
33 ~~guard and protection voluntarily furnished the employee by the employer.~~

34 (b) (1) (A) The employer shall not be liable under the workers
35 compensation act where the injury, disability or death was contributed to
36 by the employee's use or consumption of alcohol or any drugs, chemicals
37 or any other compounds or substances, including, but not limited to, any
38 drugs or medications which are available to the public without a
39 prescription from a health care provider, prescription drugs or
40 medications, any form or type of narcotic drugs, marijuana, stimulants,
41 depressants or hallucinogens.

42 (B) In the case of drugs or medications which are available to the
43 public without a prescription from a health care provider and prescription

1 drugs or medications, compensation shall not be denied if the employee
 2 can show that such drugs or medications were being taken or used in
 3 therapeutic doses and there have been no prior incidences of the
 4 employee's impairment on the job as the result of the use of such drugs or
 5 medications within the previous 24 months.

6 (C) It shall be conclusively presumed that the employee was
 7 impaired due to alcohol or drugs if it is shown that, at the time of the
 8 injury, ~~that~~ the employee had an alcohol concentration of .04 or more, or
 9 a GCMS confirmatory test by quantitative analysis showing a
 10 concentration at or above the levels shown on the following chart for the
 11 drugs of abuse listed:

12 Confirmatory test cutoff levels (ng/ml)

13 Marijuana metabolite ¹.....15
 14 Cocaine metabolite ².....150

15 Opiates:

16 Morphine.....2000
 17 Codeine.....2000
 18 6-Acetylmorphine⁴.....10 ng/ml
 19 Phencyclidine.....25

20 Amphetamines:

21 Amphetamine.....500
 22 Methamphetamine ³.....500

23 ¹ Delta-9-tetrahydrocannabinol-9-carboxylic acid.

24 ² Benzoylcegonine.

25 ³ Specimen must also contain amphetamine at a concentration greater than or equal to
 26 200 ng/ml.

27 ⁴ Test for 6-AM when morphine concentration exceeds 2,000 ng/ml.

28 (D) If it is shown that the employee was impaired pursuant to
 29 subsection (b)(1)(C) at the time of the injury, there shall be a rebuttable
 30 presumption that the accident, injury, disability or death was contributed
 31 to by such impairment. The employee may overcome the presumption of
 32 contribution by clear and convincing evidence.

33 (E) An employee's refusal to submit to a chemical test shall not be
 34 admissible evidence to prove impairment unless there was probable cause
 35 to believe that the employee used, possessed or was impaired by a drug or
 36 alcohol while working at the request of the employer shall result in the
 37 forfeiture of benefits under the workers compensation act if the employer
 38 had sufficient cause to suspect the use of alcohol or drugs by the
 39 claimant or if the employer's policy clearly authorizes post-injury testing.

40 (2) The results of a chemical test shall not be admissible evidence to
 41 prove impairment unless the following conditions were met if the
 42 employer establishes that the testing was done under any of the following
 43 circumstances:

for urine

Confirmatory test cutoff levels for oral (ng/ml)

Amphetamines.....40
 Methamphetamines.....40
 Phencyclidine.....0.5
 Cocaine.....2
 Opiates.....10
 Marijuana.....0.5

Confirmatory test cutoff levels for hair follicle (pg/ml)

Marijuana metabolite.....1
 Cocaine metabolite.....300
 Opiates.....500
 Phencyclidine.....300
 Amphetamines/Methamphetamine.....300
 MDMA (Ecstasy).....300

100