

HOUSE BILL No. 2134

By Committee on Commerce and Economic Development

1-31

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.

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.*

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 tier of fact shall*
24 *consider the whole record.*

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~~*
36 *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
13 Confirmatory test cutoff levels (ng/ml)

14	Marijuana metabolite ¹	15
15	Cocaine metabolite ²	150
16	Opiates:	
17	Morphine.....	2000
18	Codeine.....	2000
19	6-Acetylmorphine ⁴	10 ng/ml
20	Phencyclidine.....	25
21	Amphetamines:	
22	Amphetamine.....	500
23	Methamphetamine ³	500

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

25 ² Benzoylcegonine.

26 ³ Specimen must also contain amphetamine at a concentration greater than or equal to
27 200 ng/ml.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

38 (F) a split sample sufficient for testing shall be retained and made
39 available to the employee within 48 hours of a positive test result.

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

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

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

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

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

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

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

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

1 ~~compensation act shall be applied impartially to both employers and~~
2 ~~employees in cases arising thereunder.~~

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

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

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

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

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

30 *(f) If the employee is receiving*~~is receiving~~*receives, whether periodically or by*
31 *lump sum, retirement benefits under the federal social security act or*
32 *retirement benefits from any other retirement system, program, policy or*
33 *plan which is provided by the employer against which the claim is being*
34 *made, any compensation benefit payments which the employee is eligible*
35 *to receive under the workers compensation act for such claim shall be*
36 *reduced by the weekly equivalent amount of the total amount of all such*
37 *retirement benefits, less any portion of any such retirement benefit, other*
38 *than retirement benefits under the federal social security act, that is*
39 *attributable to payments or contributions made by the employee, but in no*
40 *event shall the workers compensation benefit be less than the workers*
41 *compensation benefit payable for the employee's percentage of functional*
42 *impairment. Where the employee elects to take retirement benefits in a*
43 *lump sum, the lump sum payment shall be amortized at the rate of 4% per*

1 *year over the employee's life expectancy to determine the weekly*
2 *equivalent value of the benefits.*

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

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

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

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

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

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

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

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

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

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

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

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

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

1 symptoms of an injury, and occur during a single work shift. The accident
2 must be the prevailing factor in causing the injury. "Accident" shall in no
3 case be construed to include repetitive trauma in any form.

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

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

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

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

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

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

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

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

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

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

43 (i) The employment exposed the worker to an increased risk or

1 *hazard which the worker would not have been exposed in normal non-*
2 *employment life;*

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

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

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

9 *(i) There is a causal connection between the conditions under which*
10 *the work is required to be performed and the resulting accident; and*

11 *(ii) the accident is the prevailing factor causing the injury, medical*
12 *condition, and resulting disability or impairment.*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

42 ~~(n)~~(o) "Peer review" means an evaluation by a peer review
43 committee of the appropriateness, quality and cost of health care and

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

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

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

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

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

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

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

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

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

37 (a) If an employee leaves any dependents wholly dependent upon
38 the employee's earnings at the time of the ~~accident~~injury, all
39 compensation benefits under this section shall be paid to such dependent
40 persons. There shall be an initial payment of \$40,000 to the surviving
41 legal spouse or a wholly dependent child or children or both. The initial
42 payment shall not be subject to the 8% discount as provided in K.S.A. 44-
43 531, and amendments thereto. The initial payment shall be immediately

1 due and payable and apportioned 50% to the surviving legal spouse and
2 50% to the dependent children. Thereafter, such dependents shall be paid
3 weekly compensation, except as otherwise provided in this section, in a
4 total sum to all such dependents, equal to $66\frac{2}{3}\%$ of the average ~~gross~~
5 weekly wage of the employee at the time of the ~~accident~~injury, computed
6 as provided in K.S.A. 44-511, and amendments thereto, but in no event
7 shall such weekly benefits exceed the maximum weekly benefits
8 provided in K.S.A. 44-510c, and amendments thereto, nor be less than a
9 minimum weekly benefit of the dollar amount nearest to 50% of the
10 state's average weekly wage as determined pursuant to K.S.A. 44-511,
11 and amendments thereto subject to the following:

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

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

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

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

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

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

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

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

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

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

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

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

40 (h) Notwithstanding any other provision in this section to the
41 contrary, the maximum amount of compensation benefits payable under
42 this section, including the initial payment in subsection (a) to any and all
43 dependents by the employer shall not exceed a total amount of

1 ~~\$250,000~~\$300,000 and when such total amount has been paid the liability
2 of the employer for any further compensation under this section to
3 dependents, other than minor children of the employee, shall cease except
4 that the payment of compensation under this section to any minor child of
5 the employee shall continue for the period of the child's minority at the
6 weekly rate in effect when the employer's liability is otherwise terminated
7 under this subsection and shall not be subject to termination under this
8 subsection until such child becomes 18 years of age.

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

27 Sec. 6. K.S.A. 44-510c is hereby amended to read as follows: 44-
28 510c. Where death does not result from the injury, compensation shall be
29 paid as provided in K.S.A. 44-510h and 44-510i, and amendments thereto
30 and as follows:

31 (a) (1) Where permanent total disability results from the injury,
32 weekly payments shall be made during the period of permanent total
33 disability in a sum equal to $66\frac{2}{3}\%$ of the average ~~gross~~ weekly wage of
34 the injured employee, computed as provided in K.S.A. 44-511, and
35 amendments thereto, but in no case less than \$25 per week nor more than
36 the dollar amount nearest to 75% of the state's average weekly wage,
37 determined as provided in K.S.A. 44-511, and amendments thereto, per
38 week. The payment of compensation for permanent total disability shall
39 continue for the duration of such disability, subject to review and
40 modification as provided in K.S.A. 44-528, and amendments thereto.

41 (2) Permanent total disability exists when the employee, on account
42 of the injury, has been rendered completely and permanently incapable of
43 engaging in any type of substantial and gainful employment. ~~Loss of both~~

1 eyes, both hands, both arms, both feet, or both legs, or any combination
2 thereof, in the absence of proof to the contrary, shall constitute a
3 permanent total disability. Substantially total paralysis, or incurable
4 imbecility or insanity, resulting from injury independent of all other
5 causes, shall constitute permanent total disability. In all other cases
6 permanent total disability shall be determined in accordance with the
7 facts. *Expert evidence shall be required to prove permanent total*
8 *disability.*

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

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

24 (2) (A) Temporary total disability exists when the employee, on
25 account of the injury, has been rendered completely and temporarily
26 incapable of engaging in any type of substantial and gainful employment.
27 A release issued by a health care provider with temporary ~~medical~~
28 ~~limitations~~ *restrictions* for an employee may or may not be determinative
29 of the employee's actual ability to be engaged in any type of substantial
30 and gainful employment, ~~except provided that temporary total disability~~
31 ~~compensation shall not be awarded unless the opinion of the authorized~~
32 ~~treating health care provider is shown to be based on an assessment of the~~
33 ~~employee's actual job duties with the employer, with or without~~
34 ~~accommodation.~~ *if there is an authorized treating physician, such*
35 *physicians opinion regarding the employee's work status shall be*
36 *presumed to be determinative.*

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

1 *the employee is ineligible to receive temporary total disability benefits.*

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

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

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

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

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

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

43 (1) For loss of a thumb, 60 weeks.

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

1 knee shall be considered as loss of the leg.

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

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

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

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

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

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

42 ~~(b)~~(c) Whenever the employee is entitled to compensation for a
43 specific injury under the foregoing schedule, the same shall be exclusive

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

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

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

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

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

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

32 Sec. 8. K.S.A. 44-510e is hereby amended to read as follows: 44-
33 510e. ~~(a) If the employer and the employee are unable to agree upon the~~
34 ~~amount of compensation to be paid in the case of injury not covered by~~
35 ~~the schedule in K.S.A. 44-510d and amendments thereto, the amount of~~
36 ~~compensation shall be settled according to the provisions of the workers~~
37 ~~compensation act as in other cases of disagreement, except that In case of~~
38 ~~injury resulting in temporary or permanent partial general disability not~~
39 ~~covered by such the schedule in K.S.A. 44-510d, and amendments thereto,~~
40 the employee shall receive weekly compensation as determined in this
41 subsection during ~~such the~~ period of temporary or permanent partial
42 general disability not exceeding a maximum of 415 weeks.

43 *(1) Weekly compensation for temporary partial general disability*

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

7 (2) (A) Permanent partial general disability exists when the
8 employee is disabled in a manner which is partial in character and
9 permanent in quality and which is not covered by the schedule in K.S.A.
10 44-510d, and amendments thereto. ~~The extent of permanent partial~~
11 ~~general disability shall be the extent, expressed as a percentage, to which~~
12 ~~the employee, in the opinion of the physician, has lost the ability to~~
13 ~~perform the work tasks that the employee performed in any substantial~~
14 ~~gainful employment during the fifteen-year period preceding the accident,~~
15 ~~averaged together with the difference between the average weekly wage~~
16 ~~the worker was earning at the time of the injury and the average weekly~~
17 ~~wage the worker is earning after the injury. In any event, the extent of~~
18 ~~permanent partial general disability shall not be less than the percentage~~
19 ~~of functional impairment. Functional impairment means the extent,~~
20 ~~expressed as a percentage, of the loss of a portion of the total~~
21 ~~physiological capabilities of the human body as established by competent~~
22 ~~medical evidence and based on the fourth edition of the American~~
23 ~~Medical Association Guides to the Evaluation of Permanent Impairment,~~
24 ~~if the impairment is contained therein. An employee shall not be entitled~~
25 ~~to receive permanent partial general disability compensation in excess of~~
26 ~~the percentage of functional impairment as long as the employee is~~
27 ~~engaging in any work for wages equal to 90% or more of the average~~
28 ~~gross weekly wage that the employee was earning at the time of the~~
29 ~~injury. If the employer and the employee are unable to agree upon the~~
30 ~~employee's functional impairment and if at least two medical opinions~~
31 ~~based on competent medical evidence disagree as to the percentage of~~
32 ~~functional impairment, such matter may be referred by the administrative~~
33 ~~law judge to an independent health care provider who shall be selected by~~
34 ~~the administrative law judge from a list of health care providers~~
35 ~~maintained by the director. The health care provider selected by the~~
36 ~~director pursuant to this section shall issue an opinion regarding the~~
37 ~~employee's functional impairment which shall be considered by the~~
38 ~~administrative law judge in making the final determination.~~
39 *Compensation for permanent partial general disability shall also be paid*
40 *as provided in this section where an injury results in:*

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

1 (ii) *the loss of or loss of use of a leg, lower leg or foot of one lower*
2 *extremity, combined with the loss of or loss of use of a leg, lower leg or*
3 *foot of the other lower extremity; or*

4 (iii) *the loss of or loss of use of both eyes.*

5 (B) *The extent of permanent partial general disability shall be the*
6 *percentage of functional impairment the employee sustained on account*
7 *of the injury as established by competent medical evidence and based on*
8 *the fourth edition of the American medical association guides to the*
9 *evaluation of permanent impairment, if the impairment is contained*
10 *therein.*

11 (C) *An employee may be eligible to receive permanent partial*
12 *general disability compensation in excess of the percentage of functional*
13 *impairment if:*

14 (i) *The percentage of functional impairment determined to be*
15 *caused solely by the injury exceeds 7½% to the body as a whole or the*
16 *overall functional impairment is equal to or exceeds 10% to the body as*
17 *a whole in cases where there is preexisting functional impairment; and*

18 (ii) *the employee sustained a post-injury wage loss, as defined in*
19 *K.S.A. 44-510e(a)(2)(E), and amendments thereto, 10% percent which is*
20 *directly attributable to the work injury and not to other causes or factors.*

21 *In such cases, the extent of work disability is determined by averaging*
22 *together the percentage of post-injury task loss demonstrated by the*
23 *employee to be caused by the injury and the percentage of post-injury*
24 *wage loss demonstrated by the employee to be caused by the injury.*

25 (D) *“Task loss” means the percentage to which the employee, in the*
26 *opinion of a licensed physician, has lost the ability to perform the work*
27 *tasks that the employee performed in any substantial gainful employment*
28 *during the five-year period preceding the injury. The permanent*
29 *restrictions imposed by a licensed physician as a result of the work injury*
30 *shall be used to determine those work tasks which the employee has lost*
31 *the ability to perform. If the employee has preexisting permanent*
32 *restrictions, any work tasks which the employee would have been deemed*
33 *to have lost the ability to perform, had a task loss analysis been*
34 *completed prior to the injury at issue, shall be excluded for the purposes*
35 *of calculating the task loss which is directly attributable to the current*
36 *injury.*

37 (E) *“Wage loss” means the difference between the average weekly*
38 *wage the employee was earning at the time of the injury and the average*
39 *weekly wage the employee is capable of earning after the injury. The*
40 *capability of a worker to earn post-injury wages shall be established*
41 *based upon a consideration of all factors, including, but not limited to,*
42 *the injured worker’s age, physical capabilities, education and training,*
43 *prior experience, and availability of jobs in the open labor market. The*

1 *administrative law judge shall impute an appropriate post-injury average*
 2 *weekly wage based on such factors. Where the employee is engaged in*
 3 *post-injury employment for wages, there shall be a rebuttable*
 4 *presumption that the average weekly wage an injured worker is actually*
 5 *earning constitutes the post-injury average weekly wage that the*
 6 *employee is capable of earning. The presumption may be overcome by*
 7 *competent evidence.*

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

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

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

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

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

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

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

42 The resulting award shall be paid for the number of disability weeks at
 43 the full payment rate until fully paid or modified. ~~If there is an award of~~

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

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

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

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

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

42 Sec. 9. K.S.A. 44-510f is hereby amended to read as follows: 44-
43 510f. (a) Notwithstanding any provision of the workers compensation act

1 to the contrary, the maximum compensation benefits payable by an
2 employer shall not exceed the following:

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

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

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

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

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

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

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

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

1 computed in accordance with subsection (a) of K.S.A. 44-515, and
2 amendments thereto, as may be reasonably necessary to cure and relieve
3 the employee from the effects of the injury.

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

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

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

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

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

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

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

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

43 (d) In any employment to which the workers compensation act

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

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

28 Sec. 11. K.S.A. 2010 Supp. 44-510k is hereby amended to read as
29 follows: 44-510k. (a) (1) At any time after the entry of an award for
30 compensation *wherein future medical benefits were awarded*, the
31 employee, *employer, dependent, insurance carrier or any other interested*
32 *party* may make application for a hearing, in such form as the director
33 may require for the furnishing *termination or modification* of medical
34 treatment. Such post-award hearing shall be held by the assigned
35 administrative law judge, in any county designated by the administrative
36 law judge, and the judge shall conduct the hearing as provided in K.S.A.
37 44-523, and amendments thereto.

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

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

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

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

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

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

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

42 (1) The term "money" shall be construed to mean the gross
43 remuneration, on an hourly, output, salary, commission or other basis, ~~at~~

1 ~~which the service rendered is recompensed in money by the employer,~~
2 ~~but it earned while employed by the employer, including bonuses and~~
3 ~~gratuities. Money shall not include any additional compensation, as~~
4 ~~defined in this section, any remuneration in any medium other than cash,~~
5 ~~or any other compensation or benefits received by the employee from the~~
6 ~~employer or any other source paragraph 2.~~

7 (2) (A) The term "additional compensation" shall include and
8 mean only the following: ~~(A) Gratuities in cash received by the employee~~
9 ~~from persons other than the employer for services rendered in the course~~
10 ~~of the employee's employment; (B) any cash bonuses paid by the~~
11 ~~employer within one year prior to the date of the accident, for which the~~
12 ~~average weekly value shall be determined by averaging all such bonuses~~
13 ~~over the period of time employed prior to the date of the accident, not to~~
14 ~~exceed 52 weeks; (C) (i) Board and lodging when furnished by the~~
15 ~~employer as part of the wages, which shall be valued at a maximum of~~
16 ~~\$25 per week for board and lodging combined, unless the value has been~~
17 ~~fixed otherwise by the employer and employee prior to the date of the~~
18 ~~accident or injury, or unless a higher weekly value is proved; (D) the~~
19 ~~average weekly cash value of remuneration for services in any medium~~
20 ~~other than cash where such remuneration is in lieu of money, which shall~~
21 ~~be valued in terms of the average weekly cost to the employer of such~~
22 ~~remuneration for the employee; and (E) and (ii) employer-paid life~~
23 ~~insurance, disability insurance, health and accident insurance and~~
24 ~~employer contributions to pension and profit sharing plans.~~

25 (B) In no case shall additional compensation include any amounts of
26 employer taxes paid by the employer under the old-age and survivors
27 insurance system embodied in the federal social security system.

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

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

40 (4) ~~The term "part-time hourly employee" shall mean and include~~
41 ~~any employee paid on an hourly basis: (A) Who by custom and practice~~
42 ~~or under the verbal or written employment contract in force at the time of~~
43 ~~the accident is employed to work, agrees to work, or is expected to work~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 not presumed to be full time employment.

2 (7)(3) The average ~~gross~~ weekly wage of an employee ~~who sustains~~
3 ~~an injury by accident arising out of and in the course of multiple~~
4 ~~employment, in which such employee~~ who performs the same or a very
5 similar type of work on a part-time basis for each of two or more
6 employers, shall be the ~~total average gross weekly wage of such~~
7 ~~employee paid by all the employers in such multiple employment. The~~
8 ~~total average gross weekly wage of such employee shall be the total~~
9 ~~amount of the individual average gross weekly wage determinations~~
10 ~~under this section for each individual employment of such multiple~~
11 ~~employment~~ *sum of the average weekly wages of such employee paid by*
12 *each of the employers.*

13 (8)(4) In determining an employee's average ~~gross~~ weekly wage
14 with respect to the employer against whom claim for compensation is
15 made, no money or additional compensation paid to or received by the
16 employee from such employer, or from any source other than from such
17 employer, shall be included as wages, except as provided in this section.
18 No wages, other compensation or benefits of any type, except as provided
19 in this section, shall be considered or included in determining the
20 employee's average ~~gross~~ weekly wage.

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

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

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

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

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

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

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

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

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

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

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

39 (c) Unless a report is furnished as provided in subsection (a) and
40 unless there is a reasonable opportunity thereafter for the health care
41 providers selected by the employee to participate in the examination in
42 the presence of the health care providers selected by the employer, the
43 health care providers selected by the employer or employee shall not be

1 permitted afterwards to give evidence of the condition of the employee at
2 the time such examination was made.

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

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

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

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

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

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

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

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

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

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

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

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

39 (b) Whenever a party files an application for hearing pursuant to
40 K.S.A. 44-534, and amendments thereto, the matter shall be assigned to
41 an administrative law judge for hearing and the administrative law judge
42 shall set a terminal date to require the claimant to submit all evidence in
43 support of the claimant's claim no later than 30 days after the first full

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

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

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

14 (3) on application for good cause shown.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

43 (c) In the event the employee has been overpaid temporary total

1 disability benefits as described in subsection (b) of K.S.A. 44-534a, and
2 amendments thereto, and the employee is entitled to additional disability
3 benefits, the administrative law judge shall provide for the application of
4 a credit against such benefits. The credit shall first be applied to the final
5 week of any such additional disability benefit award and then to each
6 preceding week until the credit is exhausted.

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

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

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

42 (d) Any modification of an award under this section on the basis that
43 the functional impairment or work disability of the employee has

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

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

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

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

1 *the date of the injury. Instead, the prorated rate set forth in the approved*
2 *settlement documents shall control and become the rate for that case.*
3 *This section shall be retroactive in effect.*

4 Sec. 20. K.S.A. 44-534a is hereby amended to read as follows: 44-
5 534a. (a) (1) After an application for a hearing has been filed pursuant to
6 K.S.A. 44-534, and amendments thereto, the employee or the employer
7 may make application for a preliminary hearing, in such form as the
8 director may require, on the issues of the furnishing of medical treatment
9 and the payment of temporary total disability compensation. At least
10 seven days prior to filing an application for a preliminary hearing, the
11 applicant shall give written notice to the adverse party of the intent to file
12 such an application. Such notice of intent shall contain a specific
13 statement of the benefit change being sought that is to be the subject of
14 the requested preliminary hearing. If the parties do not agree to the
15 change of benefits within the seven-day period, the party seeking a
16 change in benefits may file an application for preliminary hearing which
17 shall be accompanied by a copy of the notice of intent and the applicant's
18 certification that the notice of intent was served on the adverse party or
19 that party's attorney and that the request for a benefit change has either
20 been denied or was not answered within seven days after service. Copies
21 of medical reports or other evidence which the party intends to produce
22 as exhibits supporting the change of benefits shall be included with the
23 application. The director shall assign the application to an administrative
24 law judge who shall set the matter for a preliminary hearing and shall
25 give at least seven days' written notice by mail to the parties of the date
26 set for such hearing.

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

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

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

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

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

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

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

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

41 (3) the likelihood, if apparent to the employee or the employee's
42 dependents, that the acceptance of the particular case will preclude other
43 employment by the attorney;

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

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

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

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

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

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

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

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

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

43 (g) In the event any attorney renders services to an employee or the

1 employee's dependents, subsequent to the ultimate disposition of the
2 initial and original claim, and in connection with an application for
3 review and modification, a hearing for additional medical benefits, an
4 application for penalties or otherwise, such attorney shall be entitled to
5 reasonable attorney fees for such services, in addition to attorney fees
6 received or which the attorney is entitled to receive by contract in
7 connection with the original claim, and such attorney fees shall be
8 awarded by the director on the basis of the reasonable and customary
9 charges in the locality for such services and not on a contingent fee basis.

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

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

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

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

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

37 Sec. 22. K.S.A. 44-5a01 is hereby amended to read as follows: 44-
38 5a01. (a) Where the employer and employee or workman are subject by
39 law or election to the provisions of the workmen's compensation act, the
40 disablement or death of an employee or workman resulting from an
41 occupational disease as defined in this section shall be treated as the
42 happening of an injury by accident, and the employee or workman or, in
43 case of death, his dependents shall be entitled to compensation for such

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

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

35 (c) In no case shall an employer be liable for compensation under
36 this section unless disablement results within one (1) year or death results
37 within three (3) years in case of silicosis, or one (1) year in case of any
38 other occupational disease, after the last injurious exposure to the hazard
39 of such disease in such employment, or, in case of death, unless death
40 follows continuous disability from such disease, commencing within the
41 period above limited, for which compensation has been paid or awarded
42 or timely claim made as provided in the workmen's compensation act,
43 and results within seven (7) years after such last exposure. Where

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

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

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

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

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

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