

**Substitute for HOUSE BILL No. 2134**

By Committee on Commerce and Economic Development

2-14

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, 44-532a, 44-534a, 44-536 and 44-5a01 and K.S.A.  
4 2010 Supp. 44-501, 44-508, 44-510b, 44-510h, 44-510k, 44-511, 44-  
5 523 and 44-552 and repealing the existing sections; also repealing  
6 K.S.A. 44-510a and 44-520a and K.S.A. 2010 Supp. 44-596.

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

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

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

33 New Sec. 2. (a) An insurer or self-insured employer may provide  
34 the following notice to an insured worker on or with a check for  
35 temporary disability benefits:

36 Warning: Acceptance of employment with a different employer that

1 requires the performance of activities you have stated you cannot perform  
2 because of the injury for which you are receiving temporary disability  
3 benefits could constitute fraud and could result in loss of future benefits  
4 and restitution of prior workers compensation awards and benefits paid.

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

7 New Sec. 3. (a) Any person who is not required to be covered under  
8 a workers compensation insurance policy or other plan for the payment of  
9 workers compensation may execute an affidavit of exempt status under  
10 the workers compensation act. The affidavit shall be a form prescribed by  
11 the secretary of labor. The affidavit shall be available on the web site of  
12 the department of labor.

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

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

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

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

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

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

33 Sec. 4. 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~~  
37 ~~be liable to pay compensation to the employee in accordance with the~~  
38 ~~provisions of the workers compensation act. In proceedings under the~~  
39 ~~workers compensation act, the burden of proof shall be on the claimant to~~  
40 ~~establish the claimant's right to an award of compensation and to prove~~  
41 ~~the various conditions on which the claimant's right depends. In~~  
42 ~~determining whether the claimant has satisfied this burden of proof, the~~  
43 ~~trier of fact shall consider the whole record.~~

1       ~~(b) Except as provided in the workers compensation act, no~~  
2 ~~employer, or other employee of such employer, shall be liable for any~~  
3 ~~injury for which compensation is recoverable under the workers~~  
4 ~~compensation act nor shall an employer be liable to any third party for~~  
5 ~~any injury or death of an employee which was caused under~~  
6 ~~circumstances creating a legal liability against a third party and for which~~  
7 ~~workers compensation is payable by such employer.~~

8       ~~(e) The employee shall not be entitled to recover for the aggravation~~  
9 ~~of a preexisting condition, except to the extent that the work-related~~  
10 ~~injury causes increased disability. Any award of compensation shall be~~  
11 ~~reduced by the amount of functional impairment determined to be~~  
12 ~~preexisting.~~

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

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

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

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

25           ~~(3) the employee's willful failure to use a reasonable and proper~~  
26 ~~guard and protection voluntarily furnished the employee by the employer;~~

27           ~~(4) the employee's knowing or reckless violation of their employer's~~  
28 ~~workplace safety rules or regulations; or~~

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

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

40       ~~(c) (1) (A) The employer shall not be liable under the workers~~  
41 ~~compensation act where the injury, disability or death was contributed to~~  
42 ~~by the employee's use or consumption of alcohol or any drugs, chemicals~~  
43 ~~or any other compounds or substances, including, but not limited to, any~~

1 drugs or medications which are available to the public without a  
 2 prescription from a health care provider, prescription drugs or  
 3 medications, any form or type of narcotic drugs, marijuana, stimulants,  
 4 depressants or hallucinogens.

5 (B) In the case of drugs or medications which are available to the  
 6 public without a prescription from a health care provider and prescription  
 7 drugs or medications, compensation shall not be denied if the employee  
 8 can show that such drugs or medications were being taken or used in  
 9 therapeutic doses and there have been no prior incidences of the  
 10 employee's impairment on the job as the result of the use of such drugs or  
 11 medications within the previous 24 months.

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

18 Confirmatory test cutoff levels *for urine* (ng/ml)

19 Marijuana metabolite <sup>1</sup>.....15

20 Cocaine metabolite <sup>2</sup>.....150

21 Opiates:

22 Morphine.....2000

23 Codeine.....2000

24 6-Acetylmorphine<sup>4</sup>.....10 ng/ml

25 Phencyclidine.....25

26 Amphetamines:

27 Amphetamine.....500

28 Methamphetamine <sup>3</sup>.....500

29 *Confirmatory test cutoff levels for oral* (ng/ml)

30 *Amphetamines*.....40

31 *Methamphetamines*<sup>3</sup>.....40

32 *Phencyclidine*.....0.5

33 *Cocaine*<sup>2</sup>.....2

34 *Opiates*.....10

35 *Marijuana*<sup>1</sup>.....0.5

36 <sup>1</sup> Delta-9-tetrahydrocannabinol-9-carboxylic acid.

37 <sup>2</sup> Benzoylcegonine.

38 <sup>3</sup> Specimen must also contain amphetamine at a concentration greater than or equal to  
 39 ~~200~~100 ng/ml.

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

41 (D) *If it is shown that the employee was impaired pursuant to*  
 42 *subsection (c)(1)(C) at the time of the injury, there shall be a rebuttable*  
 43 *presumption that the accident, injury, disability or death was contributed*  
 44 *to by such impairment. The employee may overcome the presumption of*

1 *contribution by clear and convincing evidence.*

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

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

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

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

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

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

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

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

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

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

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

43 (C) ~~(B)~~ *the collecting and labeling of the test sample was performed*

1 by or under the supervision of a licensed health care professional;

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

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

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

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

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

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

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

40 ~~(C) the worker, prior to the date and time of the accident, gave~~  
41 ~~written consent to the employer that the worker would voluntarily submit~~  
42 ~~to a chemical test for drugs or alcohol following any accident requiring~~  
43 ~~the worker to obtain medical treatment for the injuries suffered. If after~~

1 suffering an accident requiring medical treatment, the worker refuses to  
2 submit to a chemical test for drugs or alcohol, this refusal shall be  
3 considered evidence of impairment, however, there must be evidence that  
4 the presumed impairment contributed to the accident as required by this  
5 section; or

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

10 (e)(d) Compensation shall not be paid in case of coronary or  
11 coronary artery disease or cerebrovascular injury unless it is shown that  
12 the exertion of the work necessary to precipitate the disability was more  
13 than the employee's usual work in the course of the employee's regular  
14 employment.

15 (f)(e) Except as provided in the workers compensation act, no  
16 construction design professional who is retained to perform professional  
17 services on a construction project or any employee of a construction  
18 design professional who is assisting or representing the construction  
19 design professional in the performance of professional services on the site  
20 of the construction project, shall be liable for any injury resulting from  
21 the employer's failure to comply with safety standards on the construction  
22 project for which compensation is recoverable under the workers  
23 compensation act, unless responsibility for safety practices is specifically  
24 assumed by contract. The immunity provided by this subsection to any  
25 construction design professional shall not apply to the negligent  
26 preparation of design plans or specifications.

27 (g) ~~It is the intent of the legislature that the workers compensation~~  
28 ~~act shall be liberally construed for the purpose of bringing employers and~~  
29 ~~employees within the provisions of the act to provide the protections of~~  
30 ~~the workers compensation act to both. The provisions of the workers~~  
31 ~~compensation act shall be applied impartially to both employers and~~  
32 ~~employees in cases arising thereunder.~~

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

38 (1) *Where workers compensation benefits have previously been*  
39 *awarded through settlement or judicial or administrative determination*  
40 *in Kansas, the percentage basis of the prior settlement or award shall*  
41 *conclusively establish the amount of functional impairment determined to*  
42 *be preexisting. Where workers compensation benefits have not previously*  
43 *been awarded through settlement or judicial or administrative*

1 *determination in Kansas, the amount of preexisting functional*  
2 *impairment shall be established by competent evidence.*

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

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

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

17 (g) *If the employee is receiving receives, whether periodically or by*  
18 *lump sum, retirement benefits under the federal social security act or*  
19 *retirement benefits from any other retirement system, program, policy or*  
20 *plan which is provided by the employer against which the claim is being*  
21 *made, any compensation benefit payments which the employee is eligible*  
22 *to receive under the workers compensation act for such claim shall be*  
23 *reduced by the weekly equivalent amount of the total amount of all such*  
24 *retirement benefits, less any portion of any such retirement benefit, other*  
25 *than retirement benefits under the federal social security act, that is*  
26 *attributable to payments or contributions made by the employee, but in no*  
27 *event shall the workers compensation benefit be less than the workers*  
28 *compensation benefit payable for the employee's percentage of functional*  
29 *impairment. Where the employee elects to take retirement benefits in a*  
30 *lump sum, the lump sum payment shall be amortized at the rate of 4% per*  
31 *year over the employee's life expectancy to determine the weekly*  
32 *equivalent value of the benefits.*

33 Sec. 5. K.S.A. 44-503a is hereby amended to read as follows: 44-  
34 503a. Whenever an employee is engaged in multiple employment, in  
35 which such employee performs the same or a very similar type of work  
36 on a part-time basis for each of two (2) or more employers, and such  
37 employee sustains an injury ~~by accident~~ which arose out of and in the  
38 course of the multiple employment with all such employers, and which  
39 did not clearly arise out of and in the course of employment with any  
40 particular employer, all such employers shall be liable to pay a  
41 proportionate amount of the compensation payable under the workmen's  
42 compensation act as follows: Each such employer shall be liable for such  
43 proportion of the total amount of compensation which is required to be



1 paid by all such employers, as the average ~~gross~~ weekly wages paid to the  
2 employee by such employer, bears to the total average ~~gross~~ weekly  
3 wages paid to the employee by all such employers, determined as  
4 provided in subsection (b) ~~(7)~~(3) of K.S.A. 44-511, ~~as amended and~~  
5 *amendments thereto*.

6 Sec. 6. K.S.A. 2010 Supp. 44-508 is hereby amended to read as  
7 follows: 44-508. As used in the workers compensation act:

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

31 (b) "Workman" or "employee" or "worker" means any person who  
32 has entered into the employment of or works under any contract of  
33 service or apprenticeship with an employer. Such terms shall include but  
34 not be limited to: Executive officers of corporations; professional  
35 athletes; persons serving on a volunteer basis as duly authorized law  
36 enforcement officers, attendants, as defined in subsection (d) of K.S.A.  
37 65-6112, and amendments thereto, drivers of ambulances as defined in  
38 subsection (b) of K.S.A. 65-6112, and amendments thereto, firefighters,  
39 but only to the extent and during such periods as they are so serving in  
40 such capacities; persons employed by educational, religious and  
41 charitable organizations, but only to the extent and during the periods that  
42 they are paid wages by such organizations; persons in the service of the  
43 state, or any department, agency or authority of the state, any city, school

1 district, or other political subdivision or municipality or public  
2 corporation and any instrumentality thereof, under any contract of  
3 service, express or implied, and every official or officer thereof, whether  
4 elected or appointed, while performing official duties; persons in the  
5 service of the state as volunteer members of the Kansas department of  
6 civil air patrol, but only to the extent and during such periods as they are  
7 officially engaged in the performance of functions specified in K.S.A. 48-  
8 3302, and amendments thereto; volunteers in any employment, if the  
9 employer has filed an election to extend coverage to such volunteers;  
10 minors, whether such minors are legally or illegally employed; and  
11 persons performing community service work, but only to the extent and  
12 during such periods as they are performing community service work and  
13 if an election has been filed an election to extend coverage to such  
14 persons. Any reference to an employee who has been injured shall, where  
15 the employee is dead, include a reference to the employee's dependents,  
16 to the employee's legal representatives, or, if the employee is a minor or  
17 an incapacitated person, to the employee's guardian or conservator.  
18 Unless there is a valid election in effect which has been filed as provided  
19 in K.S.A. 44-542a, and amendments thereto, such terms shall not include  
20 individual employers, limited liability company members, partners or  
21 self-employed persons.

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

25 (2) "Members of a family" means only surviving legal spouse and  
26 children; or if no surviving legal spouse or children, then parents or  
27 grandparents; or if no parents or grandparents, then grandchildren; or if  
28 no grandchildren, then brothers and sisters. In the meaning of this section,  
29 parents include stepparents, children include stepchildren, grandchildren  
30 include stepgrandchildren, brothers and sisters include stepbrothers and  
31 stepsisters, and children and parents include that relation by legal  
32 adoption. In the meaning of this section, a surviving spouse shall not be  
33 regarded as a dependent of a deceased employee or as a member of the  
34 family, if the surviving spouse shall have for more than six months  
35 willfully or voluntarily deserted or abandoned the employee prior to the  
36 date of the employee's death.

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

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

40 (B) a stepchild of the employee who lives in the employee's  
41 household;

42 (C) any other child who is actually dependent in whole or in part on  
43 the employee and who is related to the employee by marriage or

1 consanguinity; or

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

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

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

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

43 (1) *The date the employee, while employed for the employer against*

1 *whom benefits are sought, is taken off work by a physician due to the*  
2 *diagnosed repetitive trauma;*

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

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

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

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

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

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

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

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

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

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

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

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

41 *(ii) it is the natural consequence of a hazard connected to the*  
42 *employment; and*

43 *(iii) the accident is the prevailing factor causing the injury, medical*

1 *condition, and resulting disability or impairment.*

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

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

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

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

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

13 (B) The words "arising out of and in the course of employment"  
14 as used in the workers compensation act shall not be construed to include  
15 injuries to the employee occurring while the employee is on the way to  
16 assume the duties of employment or after leaving such duties, the  
17 proximate cause of which injury is not the employer's negligence. An  
18 employee shall not be construed as being on the way to assume the duties  
19 of employment or having left such duties at a time when the worker is on  
20 the premises *owned or under the exclusive control* of the employer or on  
21 the only available route to or from work which is a route involving a  
22 special risk or hazard *connected with the nature of the employment that is*  
23 *not a risk or hazard to which the general public is exposed* and which is a  
24 route not used by the public except in dealings with the employer. An  
25 employee shall not be construed as being on the way to assume the duties  
26 of employment, if the employee is a provider of emergency services  
27 responding to an emergency.

28 (C) The words, "arising out of and in the course of employment" as  
29 used in the workers compensation act shall not be construed to include  
30 injuries to employees while engaged in recreational or social events under  
31 circumstances where ~~the employee was under no duty to attend and~~  
32 ~~where the injury did not result from the performance of tasks related to~~  
33 ~~the employee's normal job duties or as specifically instructed to be~~  
34 ~~performed by the employer.~~ *the employee's participation in a recreational*  
35 *activity or social event is the prevailing factor of the injury, even in the*  
36 *event that the employer invited, promoted, sponsored or supported the*  
37 *recreational activity or social event, expressly or implicitly, in whole or*  
38 *in part. The provisions of this paragraph shall not apply when:*

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

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

43 (3) *the injury from such recreational activity or social event occurs*

1 *on the employer's premises due to an unsafe condition and the employer*  
2 *had actual knowledge of the employee's participation in the recreational*  
3 *activity or social event and of the unsafe condition of the premises and*  
4 *failed to either curtail the recreational activity or social event and cure*  
5 *the unsafe condition.*

6 (g) *"Prevailing" as it relates to the term "factor," means the primary*  
7 *factor, in relation to any other factor. In determining what constitutes the*  
8 *"prevailing factor" in a given case, the administrative law judge shall*  
9 *consider all relevant evidence submitted by the parties.*

10 ~~(g)~~(h) "Burden of proof" means the burden of a party to persuade the  
11 trier of facts by a preponderance of the credible evidence that such party's  
12 position on an issue is more probably true than not true on the basis of the  
13 whole record *unless a higher burden is specifically required by this act.*

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

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

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

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

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

38 ~~(m)~~(n) "Utilization review" means the initial evaluation of  
39 appropriateness in terms of both the level and the quality of health care  
40 and health services provided a patient, based on accepted standards of the  
41 health care profession involved. Such evaluation is accomplished by  
42 means of a system which identifies the utilization of health care services  
43 above the usual range of utilization for such services, which is based on

1 accepted standards of the health care profession involved, and which  
2 refers instances of possible inappropriate utilization to the director for  
3 referral to a peer review committee.

4 ~~(n)~~(o) "Peer review" means an evaluation by a peer review  
5 committee of the appropriateness, quality and cost of health care and  
6 health services provided a patient, which is based on accepted standards  
7 of the health care profession involved and which is conducted in  
8 conjunction with utilization review.

9 ~~(o)~~(p) "Peer review committee" means a committee composed of  
10 health care providers licensed to practice the same health care profession  
11 as the health care provider who rendered the health care services being  
12 reviewed.

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

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

24 ~~(r)~~(s) "Usual charge" means the amount most commonly charged by  
25 health care providers for the same or similar services.

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

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

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

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

42 Sec. 7. K.S.A. 2010 Supp. 44-510b is hereby amended to read as  
43 follows: 44-510b. Where death results from injury, compensation shall be

1 paid as provided in K.S.A. 44-510h and 44-510i, and amendments  
2 thereto, and as follows:

3 (a) If an employee leaves any dependents wholly dependent upon  
4 the employee's earnings at the time of the ~~accident~~*injury*, all  
5 compensation benefits under this section shall be paid to such dependent  
6 persons. There shall be an initial payment of \$40,000 to the surviving  
7 legal spouse or a wholly dependent child or children or both. The initial  
8 payment shall not be subject to the 8% discount as provided in K.S.A. 44-  
9 531, and amendments thereto. The initial payment shall be immediately  
10 due and payable and apportioned 50% to the surviving legal spouse and  
11 50% to the dependent children. Thereafter, such dependents shall be paid  
12 weekly compensation, except as otherwise provided in this section, in a  
13 total sum to all such dependents, equal to  $66\frac{2}{3}\%$  of the average ~~gross~~  
14 weekly wage of the employee at the time of the ~~accident~~*injury*, computed  
15 as provided in K.S.A. 44-511, and amendments thereto, but in no event  
16 shall such weekly benefits exceed the maximum weekly benefits  
17 provided in K.S.A. 44-510c, and amendments thereto, nor be less than a  
18 minimum weekly benefit of the dollar amount nearest to 50% of the  
19 state's average weekly wage as determined pursuant to K.S.A. 44-511,  
20 and amendments thereto subject to the following:

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

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

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

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

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

39 (4) If the employee leaves no legal spouse or dependent children  
40 eligible for benefits under this section but leaves other dependents wholly  
41 dependent upon the employee's earnings, such other dependents shall  
42 receive weekly compensation benefits as provided in this subsection until  
43 death, remarriage or so long as such other dependents do not receive



1 more than 50% of their support from any other earnings or income or  
2 from any other source, except that the maximum benefits payable to all  
3 such other dependents, regardless of the number of such other  
4 dependents, shall not exceed a maximum amount of \$18,500.

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

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

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

29 (e) The administrative law judge, except as otherwise provided in  
30 this section, shall have the power and authority to apportion and  
31 reapportion the compensation allowed under this section, either to wholly  
32 dependent persons or partially dependent persons, in accordance with the  
33 degree of dependency as of the date of the ~~accident~~injury, except that the  
34 weekly payment of compensation to any and all dependents shall not  
35 exceed the maximum nor be less than the minimum weekly benefits  
36 provided in subsection (a).

37 (f) In all cases of death compensable under this section, the  
38 employer shall pay the reasonable expense of burial not exceeding  
39 \$5,000. *Where required, the employer shall pay the costs of a court-*  
40 *appointed conservator not to exceed \$1,000.*

41 (g) The marriage or death of any dependent shall terminate all  
42 compensation, under this section, to such dependent except the marriage  
43 of the surviving legal spouse shall not terminate benefits to such spouse.

1 Upon the death of the surviving legal spouse or the marriage or death of a  
2 dependent child, the compensation payable to such spouse or child shall  
3 be reapportioned to those, among the surviving legal spouse and  
4 dependent children, who remain eligible to receive compensation under  
5 this section.

6 (h) Notwithstanding any other provision in this section to the  
7 contrary, the maximum amount of compensation benefits payable under  
8 this section, including the initial payment in subsection (a) to any and all  
9 dependents by the employer shall not exceed a total amount of  
10 ~~\$250,000~~\$300,000 and when such total amount has been paid the liability  
11 of the employer for any further compensation under this section to  
12 dependents, other than minor children of the employee, shall cease except  
13 that the payment of compensation under this section to any minor child of  
14 the employee shall continue for the period of the child's minority at the  
15 weekly rate in effect when the employer's liability is otherwise terminated  
16 under this subsection and shall not be subject to termination under this  
17 subsection until such child becomes 18 years of age.

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

36 Sec. 8. K.S.A. 44-510c is hereby amended to read as follows: 44-  
37 510c. Where death does not result from the injury, compensation shall be  
38 paid as provided in K.S.A. 44-510h and 44-510i, and amendments thereto  
39 and as follows:

40 (a) (1) Where permanent total disability results from the injury,  
41 weekly payments shall be made during the period of permanent total  
42 disability in a sum equal to  $66\frac{2}{3}\%$  of the average ~~gross~~ weekly wage of  
43 the injured employee, computed as provided in K.S.A. 44-511, and

1 amendments thereto, but in no case less than \$25 per week nor more than  
2 the dollar amount nearest to 75% of the state's average weekly wage,  
3 determined as provided in K.S.A. 44-511, and amendments thereto, per  
4 week. The payment of compensation for permanent total disability shall  
5 continue for the duration of such disability, subject to review and  
6 modification as provided in K.S.A. 44-528, and amendments thereto.

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

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

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

33 (2) (A) Temporary total disability exists when the employee, on  
34 account of the injury, has been rendered completely and temporarily  
35 incapable of engaging in any type of substantial and gainful employment.  
36 A release issued by a health care provider with temporary ~~medical~~  
37 ~~limitations/restrictions~~ for an employee may or may not be determinative  
38 of the employee's actual ability to be engaged in any type of substantial  
39 and gainful employment, ~~except provided that temporary total disability~~  
40 ~~compensation shall not be awarded unless the opinion of the authorized~~  
41 ~~treating health care provider is shown to be based on an assessment of the~~  
42 ~~employee's actual job duties with the employer, with or without~~  
43 ~~accommodation. if there is an authorized treating physician, such~~

1 *physicians opinion regarding the employee's work status shall be*  
2 *presumed to be determinative.*

3 *(B) Where the employee remains employed with the employer*  
4 *against whom benefits are sought, an employee shall be entitled to*  
5 *temporary total disability benefits if the authorized treating physician*  
6 *imposed temporary restrictions as a result of the work injury which the*  
7 *employer cannot accommodate. The employer is permitted to provide*  
8 *work which will meet the restrictions for the employee at the employer's*  
9 *own company or at any other for-profit or not-for-profit organization or*  
10 *company. A refusal by the employee of accommodated work within the*  
11 *temporary restrictions imposed by the authorized treating physician shall*  
12 *result in a rebuttable presumption that the employee is ineligible to*  
13 *receive temporary total disability benefits.*

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

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

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

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

34 Sec. 9. K.S.A. 44-510d is hereby amended to read as follows: 44-  
35 510d. (a) Where disability, partial in character but permanent in quality,  
36 results from the injury, the injured employee shall be entitled to the  
37 compensation provided in K.S.A. 44-510h and 44-510i, and amendments  
38 thereto, ~~but~~ *The injured employee may be entitled to payment of*  
39 *temporary total disability as defined in K.S.A. 44-510c, and amendments*  
40 *thereto, or temporary partial disability as defined in subsection (a)(1) of*  
41 *K.S.A. 44-510e, and amendments thereto, provided that the injured*  
42 *employee shall not be entitled to any other or further compensation for or*  
43 *during the first week following the injury unless such disability exists for*

1 three consecutive weeks, in which event compensation shall be paid for  
2 the first week. Thereafter compensation shall be paid for temporary total  
3 ~~loss of use and/or temporary partial disability~~ as provided in the  
4 following schedule,  $66\frac{2}{3}\%$  of the average gross weekly wages to be  
5 computed as provided in K.S.A. 44-511, and amendments thereto, except  
6 that in no case shall the weekly compensation be more than the maximum  
7 as provided for in K.S.A. 44-510c, and amendments thereto.

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

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

13 (2) For the loss of a first finger, commonly called the index finger,  
14 37 weeks.

15 (3) For the loss of a second finger, 30 weeks.

16 (4) For the loss of a third finger, 20 weeks.

17 (5) For the loss of a fourth finger, commonly called the little finger,  
18 15 weeks.

19 (6) Loss of the first phalange of the thumb or of any finger shall be  
20 considered to be equal to the loss of  $\frac{1}{2}$  of such thumb or finger, and the  
21 compensation shall be  $\frac{1}{2}$  of the amount specified above. The loss of the  
22 first phalange and any part of the second phalange of any finger, which  
23 includes the loss of any part of the bone of such second phalange, shall be  
24 considered to be equal to the loss of  $\frac{2}{3}$  of such finger and the  
25 compensation shall be  $\frac{2}{3}$  of the amount specified above. The loss of the  
26 first phalange and any part of the second phalange of a thumb which  
27 includes the loss of any part of the bone of such second phalange, shall be  
28 considered to be equal to the loss of the entire thumb. The loss of the first  
29 and second phalanges and any part of the third proximal phalange of any  
30 finger, shall be considered as the loss of the entire finger. Amputation  
31 through the joint shall be considered a loss to the next higher schedule.

32 (7) For the loss of a great toe, 30 weeks.

33 (8) For the loss of any toe other than the great toe, 10 weeks.

34 (9) The loss of the first phalange of any toe shall be considered to be  
35 equal to the loss of  $\frac{1}{2}$  of such toe and the compensation shall be  $\frac{1}{2}$  of the  
36 amount above specified.

37 (10) The loss of more than one phalange of a toe shall be considered  
38 to be equal to the loss of the entire toe.

39 (11) For the loss of a hand, 150 weeks.

40 (12) For the loss of a forearm, 200 weeks.

41 (13) For the loss of an arm, excluding the shoulder joint, shoulder  
42 girdle, shoulder musculature or any other shoulder structures, 210 weeks,  
43 and for the loss of an arm, including the shoulder joint, shoulder girdle,

- 1 shoulder musculature or any other shoulder structures, 225 weeks.
- 2 (14) For the loss of a foot, 125 weeks.
- 3 (15) For the loss of a lower leg, 190 weeks.
- 4 (16) For the loss of a leg, 200 weeks.
- 5 (17) For the loss of an eye, or the complete loss of the sight thereof,  
6 120 weeks.
- 7 (18) Amputation or severance below the wrist shall be considered as  
8 the loss of a hand. Amputation at the wrist and below the elbow shall be  
9 considered as the loss of the forearm. Amputation at or above the elbow  
10 shall be considered loss of the arm. Amputation below the ankle shall be  
11 considered loss of the foot. Amputation at the ankle and below the knee  
12 shall be considered as loss of the lower leg. Amputation at or above the  
13 knee shall be considered as loss of the leg.
- 14 (19) For the complete loss of hearing of both ears, 110 weeks.
- 15 (20) For the complete loss of hearing of one ear, 30 weeks.
- 16 (21) Permanent loss of the use of a finger, thumb, hand, shoulder,  
17 arm, forearm, toe, foot, leg or lower leg or the permanent loss of the sight  
18 of an eye or the hearing of an ear, shall be equivalent to the loss thereof.  
19 For the permanent partial loss of the use of a finger, thumb, hand,  
20 shoulder, arm, toe, foot or leg, or the sight of an eye or the hearing of an  
21 ear, compensation shall be paid as provided for in K.S.A. 44-510c, and  
22 amendments thereto, per week during that proportion of the number of  
23 weeks in the foregoing schedule provided for the loss of such finger,  
24 thumb, hand, shoulder, arm, toe, foot or leg; or the sight of an eye or the  
25 hearing of an ear, which partial loss thereof bears to the total loss of a  
26 finger, thumb, hand, shoulder, arm, toe, foot or leg, or the sight of an eye  
27 or the hearing of an ear; but in no event shall the compensation payable  
28 hereunder for such partial loss exceed the compensation payable under  
29 the schedule for the total loss of such finger, thumb, hand, arm, toe, foot  
30 or leg, or the sight of an eye or the hearing of an ear, exclusive of the  
31 healing period. As used in this paragraph (21), "shoulder" means the  
32 shoulder joint, shoulder girdle, shoulder musculature or any other  
33 shoulder structures.
- 34 (22) For traumatic hernia, compensation shall be limited to the  
35 compensation under K.S.A. 44-510h and 44-510i, and amendments  
36 thereto, compensation for temporary total disability during such period of  
37 time as such employee is actually unable to work on account of such  
38 hernia, and, in the event such hernia is inoperable, weekly compensation  
39 during 12 weeks, except that, in the event that such hernia is operable, the  
40 unreasonable refusal of the employee to submit to an operation for  
41 surgical repair of such hernia shall deprive such employee of any benefits  
42 under the workers compensation act.
- 43 (23) Loss of *or loss of use of* a scheduled member shall be based

1 upon permanent impairment of function to the scheduled member as  
2 determined using the fourth edition of the American medical association  
3 guides to the evaluation of permanent impairment, if the impairment is  
4 contained therein.

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

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

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

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

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

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

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

1       Sec. 10. K.S.A. 44-510e is hereby amended to read as follows: 44-  
2 510e. (a) ~~If the employer and the employee are unable to agree upon the~~  
3 ~~amount of compensation to be paid in the case of injury not covered by~~  
4 ~~the schedule in K.S.A. 44-510d and amendments thereto, the amount of~~  
5 ~~compensation shall be settled according to the provisions of the workers~~  
6 ~~compensation act as in other cases of disagreement, except that~~ In case of  
7 *injury resulting in* temporary or permanent partial general disability not  
8 covered by ~~such~~*the schedule in K.S.A. 44-510d, and amendments thereto,*  
9 the employee shall receive weekly compensation as determined in this  
10 subsection during ~~such~~*the* period of temporary or permanent partial  
11 general disability not exceeding a maximum of 415 weeks.

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

19       (2) (A) Permanent partial general disability exists when the  
20 employee is disabled in a manner which is partial in character and  
21 permanent in quality and which is not covered by the schedule in K.S.A.  
22 44-510d, and amendments thereto. ~~The extent of permanent partial~~  
23 ~~general disability shall be the extent, expressed as a percentage, to which~~  
24 ~~the employee, in the opinion of the physician, has lost the ability to~~  
25 ~~perform the work tasks that the employee performed in any substantial~~  
26 ~~gainful employment during the fifteen-year period preceding the accident,~~  
27 ~~averaged together with the difference between the average weekly wage~~  
28 ~~the worker was earning at the time of the injury and the average weekly~~  
29 ~~wage the worker is earning after the injury. In any event, the extent of~~  
30 ~~permanent partial general disability shall not be less than the percentage~~  
31 ~~of functional impairment. Functional impairment means the extent,~~  
32 ~~expressed as a percentage, of the loss of a portion of the total~~  
33 ~~physiological capabilities of the human body as established by competent~~  
34 ~~medical evidence and based on the fourth edition of the American~~  
35 ~~Medical Association Guides to the Evaluation of Permanent Impairment,~~  
36 ~~if the impairment is contained therein. An employee shall not be entitled~~  
37 ~~to receive permanent partial general disability compensation in excess of~~  
38 ~~the percentage of functional impairment as long as the employee is~~  
39 ~~engaging in any work for wages equal to 90% or more of the average~~  
40 ~~gross weekly wage that the employee was earning at the time of the~~  
41 ~~injury. If the employer and the employee are unable to agree upon the~~  
42 ~~employee's functional impairment and if at least two medical opinions~~  
43 ~~based on competent medical evidence disagree as to the percentage of~~



1 functional impairment, such matter may be referred by the administrative  
2 law judge to an independent health care provider who shall be selected by  
3 the administrative law judge from a list of health care providers  
4 maintained by the director. The health care provider selected by the  
5 director pursuant to this section shall issue an opinion regarding the  
6 employee's functional impairment which shall be considered by the  
7 administrative law judge in making the final determination.  
8 *Compensation for permanent partial general disability shall also be paid*  
9 *as provided in this section where an injury results in:*

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

13 (ii) *the loss of or loss of use of a leg, lower leg or foot of one lower*  
14 *extremity, combined with the loss of or loss of use of a leg, lower leg or*  
15 *foot of the other lower extremity; or*

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

17 (B) *The extent of permanent partial general disability shall be the*  
18 *percentage of functional impairment the employee sustained on account*  
19 *of the injury as established by competent medical evidence and based on*  
20 *the fourth edition of the American medical association guides to the*  
21 *evaluation of permanent impairment, if the impairment is contained*  
22 *therein.*

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

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

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

34 *In such cases, the extent of work disability is determined by averaging*  
35 *together the percentage of post-injury task loss demonstrated by the*  
36 *employee to be caused by the injury and the percentage of post-injury*  
37 *wage loss demonstrated by the employee to be caused by the injury.*

38 (D) *"Task loss" means the percentage to which the employee, in the*  
39 *opinion of a licensed physician, has lost the ability to perform the work*  
40 *tasks that the employee performed in any substantial gainful employment*  
41 *during the five-year period preceding the injury. The permanent*  
42 *restrictions imposed by a licensed physician as a result of the work injury*  
43 *shall be used to determine those work tasks which the employee has lost*

1 *the ability to perform. If the employee has preexisting permanent*  
2 *restrictions, any work tasks which the employee would have been deemed*  
3 *to have lost the ability to perform, had a task loss analysis been*  
4 *completed prior to the injury at issue, shall be excluded for the purposes*  
5 *of calculating the task loss which is directly attributable to the current*  
6 *injury.*

7 (E) *“Wage loss” means the difference between the average weekly*  
8 *wage the employee was earning at the time of the injury and the average*  
9 *weekly wage the employee is capable of earning after the injury. The*  
10 *capability of a worker to earn post-injury wages shall be established*  
11 *based upon a consideration of all factors, including, but not limited to,*  
12 *the injured worker’s age, physical capabilities, education and training,*  
13 *prior experience, and availability of jobs in the open labor market. The*  
14 *administrative law judge shall impute an appropriate post-injury average*  
15 *weekly wage based on such factors. Where the employee is engaged in*  
16 *post-injury employment for wages, there shall be a rebuttable*  
17 *presumption that the average weekly wage an injured worker is actually*  
18 *earning constitutes the post-injury average weekly wage that the*  
19 *employee is capable of earning. The presumption may be overcome by*  
20 *competent evidence.*

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

25 (ii) *The actual or projected weekly value of any employer-paid*  
26 *fringe benefits are to be included as part of the worker’s post-injury*  
27 *average weekly wage and shall be added to the wage imputed by the*  
28 *administrative law judge pursuant to subsection (a)(2)(E) of K.S.A. 44-*  
29 *510e, and amendments thereto.*

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

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

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

41 (2)(ii) *find the number of disability weeks payable by (a) subtracting*  
42 *from 415 weeks the total number of weeks of temporary total disability*  
43 *compensation was paid, excluding the first 15 weeks of temporary total*

1 ~~disability compensation that was paid, and multiplying. To calculate the~~  
2 *number of weeks of temporary disability compensation to be deducted*  
3 *pursuant to subparagraph (F)(ii), divide the sum of all temporary total*  
4 *and temporary partial disability compensation paid by the payment rate*  
5 *determined in subsection(a)(2)(E)(i), and (b) multiply the remainder by*  
6 *the percentage of permanent partial general disability as determined*  
7 *under this subsection (a); and*

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

12 The resulting award shall be paid for the number of disability weeks at  
13 the full payment rate until fully paid or modified. ~~If there is an award of~~  
14 ~~permanent disability as a result of the compensable injury, there shall be a~~  
15 ~~presumption that disability existed immediately after such injury.~~ In any  
16 case of permanent partial disability under this section, the employee shall  
17 be paid compensation for not to exceed 415 weeks following the date of  
18 such injury, ~~subject to review and modification as provided in K.S.A. 44-~~  
19 ~~528 and amendments thereto.~~ *If there is an award of permanent disability*  
20 *as a result of the compensable injury, there shall be a presumption that*  
21 *disability existed immediately after such injury. Under no circumstances*  
22 *shall the period of permanent partial disability run concurrently with the*  
23 *period of temporary total or temporary partial disability.*

24 (b) If an employee has ~~received~~sustained an injury for which  
25 compensation is being paid, and the employee's death is caused by other  
26 and independent causes, any payment of compensation already due the  
27 employee at the time of death and then unpaid shall be paid to the  
28 employee's dependents directly or to the employee's legal representatives  
29 if the employee left no dependent, but the liability of the employer for the  
30 payments of compensation not yet due at the time of the death of such  
31 employee shall cease and be abrogated by the employee's death.

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

37 (d) Where a minor employee or a minor employee's dependents are  
38 entitled to compensation under the workers compensation act, such  
39 compensation shall be exclusive of all other remedies or causes of action  
40 for such injury or death, and no claim or cause of action against the  
41 employer shall inure or accrue to or exist in favor of the parent or parents  
42 of such minor employee on account of any damage resulting to such  
43 parent or parents on account of the loss of earnings or loss of service of

1 such minor employee.

2 (e) In any case of injury to or death of an employee, where the  
3 employee or the employee's dependents are entitled to compensation  
4 under the workers compensation act, such compensation shall be  
5 exclusive of all other remedies or causes of action for such injury or  
6 death, and no claim or action shall inure, accrue to or exist in favor of the  
7 surviving spouse or any relative or next of kin of such employee against  
8 such employer on account of any damage resulting to such surviving  
9 spouse or any relative or next of kin on account of the loss of earnings,  
10 services, or society of such employee or on any other account resulting  
11 from or growing out of the injury or death of such employee.

12 Sec. 11. K.S.A. 44-510f is hereby amended to read as follows: 44-  
13 510f. (a) Notwithstanding any provision of the workers compensation act  
14 to the contrary, the maximum compensation benefits payable by an  
15 employer shall not exceed the following:

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

20 (2) for temporary total disability, including any prior permanent  
21 total, permanent partial or temporary partial disability payments paid or  
22 due, ~~\$100,000~~ \$130,000 for an injury ~~or any aggravation~~ thereof;

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

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

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

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

39 (2) may be withheld from the employee's wages in weekly amounts  
40 ~~the same as equal to~~ the weekly amount or amounts paid in excess of  
41 compensation due; ~~but not until and unless~~ *The excess amount paid may*  
42 *only be withheld from the employee's wages if the employee's average*  
43 ~~gross~~ weekly wage for the calendar year exceeds 125% of the state's

1 average weekly wage, determined as provided in K.S.A. 44-511, and  
2 amendments thereto. ~~The provisions of this subsection shall not apply to~~  
3 ~~any employer who pays any such unearned wages to an employee~~  
4 ~~pursuant to an agreement between the employer and employee or labor~~  
5 ~~organization to which the employee belongs.~~

6 Sec. 12. K.S.A. 2010 Supp. 44-510h is hereby amended to read as  
7 follows: 44-510h. (a) It shall be the duty of the employer to provide the  
8 services of a health care provider, and such medical, surgical and hospital  
9 treatment, including nursing, medicines, medical and surgical supplies,  
10 ambulance, crutches, apparatus and transportation to and from the home  
11 of the injured employee to a place outside the community in which such  
12 employee resides, and within such community if the director, in the  
13 director's discretion, so orders, including transportation expenses  
14 computed in accordance with subsection (a) of K.S.A. 44-515, and  
15 amendments thereto, as may be reasonably necessary to cure and relieve  
16 the employee from the effects of the injury.

17 (b) (1) If the director finds, upon application of an injured employee,  
18 that the services of the health care provider furnished as provided in  
19 subsection (a) and rendered on behalf of the injured employee are not  
20 satisfactory, the director may authorize the appointment of some other  
21 health care provider. In any such case, the employer shall submit the  
22 names of ~~three~~two health care providers who, if possible given the  
23 availability of local health care providers, are not associated in practice  
24 together. The injured employee may select one from the list who shall be  
25 the authorized treating health care provider. If the injured employee is  
26 unable to obtain satisfactory services from any of the health care  
27 providers submitted by the employer under this paragraph, either party or  
28 both parties may request the director to select a treating health care  
29 provider.

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

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

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

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

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

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

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

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

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

41 Sec. 13. K.S.A. 2010 Supp. 44-510k is hereby amended to read as  
42 follows: 44-510k. (a) (1) At any time after the entry of an award for  
43 compensation *wherein future medical benefits were awarded*, the

1 employee, employer, dependent, insurance carrier or any other interested  
2 party may make application for a hearing, in such form as the director  
3 may require for the furnishing *termination or modification* of medical  
4 treatment. Such post-award hearing shall be held by the assigned  
5 administrative law judge, in any county designated by the administrative  
6 law judge, and the judge shall conduct the hearing as provided in K.S.A.  
7 44-523, and amendments thereto.

8 (2) The administrative law judge can (A) make an award for further  
9 medical care if the administrative law judge finds *that it is more probably*  
10 *true than not* that the *injury which was the subject of the underlying*  
11 *award is the prevailing factor in the need for further medical care and*  
12 *that the care requested is necessary to cure or relieve the effects of the*  
13 ~~accidental injury which was the subject of the underlying award such~~  
14 *injury, or (B) terminate or modify an award of current or future medical*  
15 *care if the administrative law judge finds that no further medical care is*  
16 *required, the injury which was the subject of the underlying award is not*  
17 *the prevailing factor in the need for further medical care, or that the care*  
18 *requested is not necessary to cure or relieve the effects of such injury.*

19 (3) *If the claimant has not received medical treatment, as defined in*  
20 *subsection (e) of K.S.A. 44-510h, and amendments thereto, within two*  
21 *years from the date of the award or two years from the date the claimant*  
22 *last received medical treatment, the employer shall be permitted to make*  
23 *application under this section for permanent termination of future*  
24 *medical benefits. In such case, there shall be a presumption that no*  
25 *further medical care is needed as a result of the underlying injury. The*  
26 *presumption may be overcome by competent medical evidence.*

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

34 (b) Any application for hearing made pursuant to this section shall  
35 receive priority setting by the administrative law judge, only superseded  
36 by preliminary hearings pursuant to K.S.A. 44-534a, and amendments  
37 thereto. The parties shall meet and confer prior to the hearing pursuant to  
38 this section, but a prehearing settlement conference shall not be  
39 necessary. The administrative law judge shall have authority to award  
40 medical treatment relating back to the entry of the underlying award, but  
41 in no event shall such medical treatment relate back more than six months  
42 following the filing of such application for post-award medical treatment.  
43 Reviews taken under this section shall receive priority settings before the

1 board, only superseded by reviews for preliminary hearings. A decision  
2 shall be rendered by the board within 30 days from the time the review  
3 hereunder is submitted.

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

11 Sec. 14. K.S.A. 2010 Supp. 44-511 is hereby amended to read as  
12 follows: 44-511. (a) As used in this section:

13 (1) The term "money" shall be construed to mean the gross  
14 remuneration, on an hourly, output, salary, commission or other basis,  
15 ~~at which the service rendered is recompensed in money by the employer,~~  
16 ~~but it earned while employed by the employer, including bonuses and~~  
17 ~~gratuities.~~ Money shall not include any additional compensation, as  
18 defined in this section, ~~any remuneration in any medium other than cash,~~  
19 ~~or any other compensation or benefits received by the employee from the~~  
20 ~~employer or any other source~~ *paragraph 2.*

21 (2) (A) The term "additional compensation" shall include and  
22 mean only the following: ~~(A) Gratuities in cash received by the employee~~  
23 ~~from persons other than the employer for services rendered in the course~~  
24 ~~of the employee's employment; (B) any cash bonuses paid by the~~  
25 ~~employer within one year prior to the date of the accident, for which the~~  
26 ~~average weekly value shall be determined by averaging all such bonuses~~  
27 ~~over the period of time employed prior to the date of the accident, not to~~  
28 ~~exceed 52 weeks; (C) (i) Board and lodging when furnished by the~~  
29 ~~employer as part of the wages, which shall be valued at a maximum of~~  
30 ~~\$25 per week for board and lodging combined, unless the value has been~~  
31 ~~fixed otherwise by the employer and employee prior to the date of the~~  
32 ~~accident or injury, or unless a higher weekly value is proved; (D) the~~  
33 ~~average weekly cash value of remuneration for services in any medium~~  
34 ~~other than cash where such remuneration is in lieu of money, which shall~~  
35 ~~be valued in terms of the average weekly cost to the employer of such~~  
36 ~~remuneration for the employee; and (E) and (ii) employer-paid life~~  
37 ~~insurance, disability insurance, health and accident insurance and~~  
38 ~~employer contributions to pension and profit sharing plans.~~

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

42 (C) Additional compensation shall not ~~include the value of such~~  
43 ~~remuneration until and unless such remuneration is discontinued~~ *be*



1 *included in the calculation of average wage until and unless such*  
2 *additional compensation is discontinued.* If such ~~remuneration~~*additional*  
3 *compensation* is discontinued subsequent to a computation of average  
4 ~~gross~~ weekly wages under this section, there shall be a recomputation to  
5 include such discontinued ~~remuneration~~*additional compensation*.

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

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

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

28 (b) (1) ~~The~~*Unless otherwise provided, the* employee's average  
29 ~~gross~~ weekly wage for the purpose of computing any compensation  
30 benefits provided by the workers compensation act shall be ~~determined as~~  
31 ~~follows: the wages the employee earned during the calendar weeks~~  
32 *employed by the employer; up to 26 calendar weeks immediately*  
33 *preceding the date of the injury, divided by the number of calendar weeks*  
34 *the employee actually worked, or by 26 as the case may be.*

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

40 (2) ~~If at the time of the accident the money rate is fixed by the~~  
41 ~~month, the average gross weekly wage shall be the monthly rate so fixed~~  
42 ~~multiplied by 12 and divided by 52, plus the average weekly value of any~~  
43 ~~additional compensation and the value of the employee's average weekly~~

1 overtime computed as provided in paragraph (4) of this subsection.

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

7 ~~(4) If at the time of the accident the employee's money rate was~~  
8 ~~fixed by the hour, the employee's average gross weekly wage shall be~~  
9 ~~determined as follows: (A) If the employee was a part-time hourly~~  
10 ~~employee, as defined in this section, the average gross weekly wage shall~~  
11 ~~be determined in the same manner as provided in paragraph (5) of this~~  
12 ~~subsection; (B) if the employee is a full-time hourly employee, as defined~~  
13 ~~in this section, the average gross weekly wage shall be determined as~~  
14 ~~follows: (i) A daily money rate shall first be found by multiplying the~~  
15 ~~straight-time hourly rate applicable at the time of the accident, by the~~  
16 ~~eustomary number of working hours constituting an ordinary day in the~~  
17 ~~eharaacter of work involved; (ii) the straight-time weekly rate shall be~~  
18 ~~found by multiplying the daily money rate by the number of days and half~~  
19 ~~days that the employee usually and regularly worked, or was expected to~~  
20 ~~work, but 40 hours shall constitute the minimum hours for computing the~~  
21 ~~wage of a full-time hourly employee, unless the employer's regular and~~  
22 ~~eustomary workweek is less than 40 hours, in which case, the number of~~  
23 ~~hours in such employer's regular and eustomary workweek shall govern;~~  
24 ~~(iii) the average weekly overtime of the employee shall be the total~~  
25 ~~amount earned by the employee in excess of the amount of straight-time~~  
26 ~~money earned by the employee during the 26 calendar weeks~~  
27 ~~immediately preceding the date of the accident, or during the actual~~  
28 ~~number of such weeks the employee was employed if less than 26 weeks,~~  
29 ~~divided by the number of such weeks; and (iv) the average gross weekly~~  
30 ~~wage of a full-time hourly employee shall be the total of the straight-time~~  
31 ~~weekly rate, the average weekly overtime and the weekly average of any~~  
32 ~~additional compensation.~~

33 ~~(5) If at the time of the accident the money rate is fixed by the~~  
34 ~~output of the employee, on a commission or percentage basis, on a flat-~~  
35 ~~rate basis for performance of a specified job, or on any other basis where~~  
36 ~~the money rate is not fixed by the week, month, year or hour, and if the~~  
37 ~~employee has been employed by the employer at least one calendar week~~  
38 ~~immediately preceding the date of the accident, the average gross weekly~~  
39 ~~wage shall be the gross amount of money earned during the number of~~  
40 ~~alendar weeks so employed, up to a maximum of 26 calendar weeks~~  
41 ~~immediately preceding the date of the accident, divided by the number of~~  
42 ~~weeks employed, or by 26 as the case may be, plus the average weekly~~  
43 ~~value of any additional compensation and the value of the employee's~~

1 average weekly overtime computed as provided in paragraph (4) of this  
2 subsection.

3 (2) If the employee had been in the employment of *actually*  
4 *employed by* the employer for less than one calendar week immediately  
5 preceding the accident *or injury*, the average ~~gross~~ weekly wage shall be  
6 determined by the administrative law judge based upon all of the  
7 evidence and circumstances, including the usual wage for similar services  
8 paid by the same employer, or if the employer has no employees  
9 performing similar services, the usual wage paid for similar services by  
10 other employers. The average ~~gross~~ weekly wage so determined shall not  
11 exceed the actual average ~~gross~~ weekly wage the employee was  
12 reasonably expected to earn in the employee's specific employment,  
13 including the average weekly value of any additional compensation ~~and~~  
14 ~~the value of the employee's average weekly overtime computed as~~  
15 ~~provided in paragraph (4) of this subsection. In making any computations~~  
16 ~~under this paragraph (5), workweeks during which the employee was on~~  
17 ~~vacation, leave of absence, sick leave or was absent the entire workweek~~  
18 ~~because of illness or injury shall not be considered.~~

19 (6) (A) ~~The average gross weekly wage of a person serving on a~~  
20 ~~volunteer basis as a duly authorized law enforcement officer, ambulance~~  
21 ~~attendants and drivers as provided in subsection (b) of K.S.A. 44-508,~~  
22 ~~and amendments thereto, firefighter or members of regional emergency~~  
23 ~~medical response teams as provided in K.S.A. 48-928, and amendments~~  
24 ~~thereto, who receives no wages for such services, or who receives wages~~  
25 ~~which are substantially less than the usual wages paid for such services~~  
26 ~~by comparable employers to employees who are not volunteers, shall be~~  
27 ~~computed on the basis of the dollar amount closest to, but not exceeding,~~  
28 ~~112.5% of the state average weekly wage.~~

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

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

1 volunteer member under the provisions of this subsection prior to the  
2 effective date of such increase in the rates of compensation of the pay-  
3 plan for persons in the classified service under the Kansas civil service  
4 act.

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

16 ~~(7)(3) The average gross weekly wage of an employee who sustains~~  
17 ~~an injury by accident arising out of and in the course of multiple~~  
18 ~~employment, in which such employee who performs the same or a very~~  
19 ~~similar type of work on a part-time basis for each of two or more~~  
20 ~~employers, shall be the total average gross weekly wage of such~~  
21 ~~employee paid by all the employers in such multiple employment. The~~  
22 ~~total average gross weekly wage of such employee shall be the total~~  
23 ~~amount of the individual average gross weekly wage determinations~~  
24 ~~under this section for each individual employment of such multiple~~  
25 ~~employment sum of the average weekly wages of such employee paid by~~  
26 ~~each of the employers.~~

27 ~~(8)(4) In determining an employee's average gross weekly wage~~  
28 ~~with respect to the employer against whom claim for compensation is~~  
29 ~~made, no money or additional compensation paid to or received by the~~  
30 ~~employee from such employer, or from any source other than from such~~  
31 ~~employer, shall be included as wages, except as provided in this section.~~  
32 ~~No wages, other compensation or benefits of any type, except as provided~~  
33 ~~in this section, shall be considered or included in determining the~~  
34 ~~employee's average gross weekly wage.~~

35 ~~(5) (A) The average weekly wage of a person serving on a~~  
36 ~~volunteer basis as a duly authorized law enforcement officer, ambulance~~  
37 ~~attendants and drivers as provided in subsection (b) of K.S.A. 44-508,~~  
38 ~~and amendments thereto, firefighter or members of regional emergency~~  
39 ~~medical response teams as provided in K.S.A. 48-928, and amendments~~  
40 ~~thereto, who receives no wages for such services, or who receives wages~~  
41 ~~which are substantially less than the usual wages paid for such services~~  
42 ~~by comparable employers to employees who are not volunteers, shall be~~  
43 ~~computed on the basis of the dollar amount closest to, but not exceeding,~~

1 112½% of the state average weekly wage.

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

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

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

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

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

38 ~~(e)~~(d) Members of a labor union or other association who perform  
39 services in behalf of the labor union or other association and who are not  
40 paid as full-time employees of the labor union or other association and  
41 who are injured or suffer occupational disease in the course of the  
42 performance of duties in behalf of the labor union or other association  
43 shall recover compensation benefits under the workers compensation act

1 from the labor union or other association if the labor union or other  
2 association files an election with the director to bring its members who  
3 perform such services under the coverage of the workers compensation  
4 act. The average weekly wage for the purpose of this subsection shall be  
5 based on what the employee would earn in the employee's general  
6 occupation if at the time of the injury the employee had been performing  
7 work in the employee's general occupation. The insurance coverage shall  
8 be furnished by the labor union or other association.

9 Sec. 15. K.S.A. 44-515 is hereby amended to read as follows: 44-

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

1 the workers compensation act shall be entitled to a copy of the report of  
2 any health care provider who has examined or treated the employee in  
3 regard to such claim upon written request to the employee or the  
4 employee's attorney within ~~15 days~~ *a reasonable amount of time* after  
5 such examination or treatment, which report shall be identical to the  
6 report submitted to the employee or the employee's attorney.

7 (b) If the employee requests, such employee shall be entitled to have  
8 health care providers of such employee's own selection present at the time  
9 to participate in such examination *at the employee's own expense*.

10 (c) Unless a report is furnished as provided in subsection (a) and  
11 unless there is a reasonable opportunity thereafter for the health care  
12 providers selected by the employee to participate in the examination in  
13 the presence of the health care providers selected by the employer, the  
14 health care providers selected by the employer or employee shall not be  
15 permitted afterwards to give evidence of the condition of the employee at  
16 the time such examination was made.

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

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

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

35 (b) *If at least two medical opinions based on competent medical*  
36 *evidence disagree as to the percentage of functional impairment, such*  
37 *matter may be referred by the administrative law judge to an independent*  
38 *health care provider who shall be agreed upon by the parties. Where the*  
39 *parties cannot agree, an independent healthcare provider shall be*  
40 *selected by the administrative law judge. The health care provider agreed*  
41 *to by the parties or selected by the administrative law judge pursuant to*  
42 *this section shall issue an opinion regarding the employee's functional*  
43 *impairment which shall be considered by the administrative law judge in*

1 *making the final determination.*

2 Sec. 17. K.S.A. 44-520 is hereby amended to read as follows: 44-  
3 520. ~~Except as otherwise provided in this section, (a) Proceedings for~~  
4 ~~compensation under the workers compensation act shall not be~~  
5 ~~maintainable unless notice of the accident, stating the time and place and~~  
6 ~~particulars thereof, and the name and address of the person injured, is~~  
7 ~~given to the employer within 10 days after the date of the accident, except~~  
8 ~~that actual knowledge of the accident by the employer or the employer's~~  
9 ~~duly authorized agent shall render the giving of such notice unnecessary.~~  
10 ~~The ten-day notice provided in this section shall not bar any proceeding~~  
11 ~~for compensation under the workers compensation act if the claimant~~  
12 ~~shows that a failure to notify under this section was due to just cause;~~  
13 ~~except that in no event shall such a proceeding for compensation be~~  
14 ~~maintained unless the notice required by this section is given to the~~  
15 ~~employer within 75 days after the date of the accident unless (a) actual~~  
16 ~~knowledge of the accident by the employer or the employer's duly~~  
17 ~~authorized agent renders the giving of such notice unnecessary as~~  
18 ~~provided in this section, (b) the employer was unavailable to receive such~~  
19 ~~notice as provided in this section, or (c) the employee was physically~~  
20 ~~unable to give such notice injury by accident or repetitive trauma is given~~  
21 ~~to the employer: Within 30 calendar days of the date of accident or the~~  
22 ~~date of injury by repetitive trauma; within 10 calendar days after the~~  
23 ~~employee's last day of employment; or within 10 calendar days after the~~  
24 ~~employee seeks medical treatment specifically for the injury, as defined in~~  
25 ~~subsection (e) of K.S.A. 44-510h, and amendments thereto. Notice shall~~  
26 ~~be provided within a time period never to exceed 30 calendar days of the~~  
27 ~~date of accident or the date of injury by repetitive trauma. Notice may be~~  
28 ~~given orally or in writing.~~

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

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

40 *(3) The notice, whether provided orally or in writing, shall include*  
41 *the time, date, place, person injured, witnesses, if any, and particulars of*  
42 *such injury. It must be apparent from the content of the notice that the*  
43 *employee is claiming benefits under the workers compensation act or has*



1 *suffered a work-related injury.*

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

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

10 Sec. 18. K.S.A. 2010 Supp. 44-523 is hereby amended to read as  
11 follows: 44-523. (a) The director, administrative law judge or board shall  
12 not be bound by technical rules of procedure, but shall give the parties  
13 reasonable opportunity to be heard and to present evidence, insure the  
14 employee and the employer an expeditious hearing and act reasonably  
15 without partiality.

16 (b) Whenever a party files an application for hearing pursuant to  
17 K.S.A. 44-534, and amendments thereto, the matter shall be assigned to  
18 an administrative law judge for hearing and the administrative law judge  
19 shall set a terminal date to require the claimant to submit all evidence in  
20 support of the claimant's claim no later than 30 days after the first full  
21 hearing before the administrative law judge and to require the respondent  
22 to submit all evidence in support of the respondent's position no later than  
23 30 days thereafter. An extension of the foregoing time limits shall be  
24 granted if all parties agree. An extension of the foregoing time limits may  
25 also be granted:

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

28 (2) for medical examination of the claimant if the party requesting  
29 the extension explains in writing to the administrative law judge facts  
30 showing that the party made a diligent effort but was unable to have a  
31 medical examination conducted prior to the submission of the case by the  
32 claimant but then only if the examination appointment was set and notice  
33 of the appointment sent prior to submission by the claimant; or

34 (3) on application for good cause shown.

35 (c) When all parties have submitted the case to an administrative law  
36 judge for an award, the administrative law judge shall issue an award  
37 within 30 days. The administrative law judge shall not stay a decision due  
38 to the absence of a submission letter. When the award is not entered in 30  
39 days, any party to the action may notify the director that an award is not  
40 entered and the director shall assign the matter to an assistant director or  
41 to a special administrative law judge who shall enter an award forthwith  
42 based on the evidence in the record, or the director, on the director's own  
43 motion, may remove the case from the administrative law judge who has

1 not entered an award within 30 days following submission by the party  
2 and assign it to an assistant director or to a special administrative law  
3 judge for immediate decision based on the evidence in the record.

4 (d) Not less than 10 days prior to the first full hearing before an  
5 administrative law judge, the administrative law judge shall conduct a  
6 prehearing settlement conference for the purpose of obtaining stipulations  
7 from the parties, determining the issues and exploring the possibility that  
8 the parties may resolve those issues and reach a settlement prior to the  
9 first full hearing.

10 (e) (1) If a party or a party's attorney believes that the administrative  
11 law judge to whom a case is assigned cannot afford that party a fair  
12 hearing in the case, the party or attorney may file a motion for change of  
13 administrative law judge. A party or a party's attorney shall not file more  
14 than one motion for change of administrative law judge in a case. The  
15 administrative law judge shall promptly hear the motion informally upon  
16 reasonable notice to all parties who have appeared in the case.  
17 Notwithstanding the provisions of K.S.A. 44-552, and amendments  
18 thereto, the administrative law judge shall decide, in the administrative  
19 law judge's discretion, whether or not the hearing of such motion shall be  
20 taken down by a certified shorthand reporter. If the administrative law  
21 judge disqualifies the administrative law judge's self, the case shall be  
22 assigned to another administrative law judge by the director. If the  
23 administrative law judge refuses to disqualify the administrative law  
24 judge's self, the party seeking a change of administrative law judge may  
25 file in the district court of the county in which the accident *or injury*  
26 occurred the affidavit provided in subsection (e)(2). If an affidavit is to be  
27 filed in the district court, it shall be filed within 10 days.

28 (2) If a party or a party's attorney files an affidavit alleging any of  
29 the grounds specified in subsection (e)(3), the chief judge shall at once  
30 determine, or refer the affidavit to another district court judge for prompt  
31 determination of, the legal sufficiency of the affidavit. If the affidavit is  
32 filed in a district court in which there is no other judge who is qualified to  
33 hear the matter, the chief judge shall at once notify the departmental  
34 justice for the district and request the appointment of another district  
35 judge to determining the legal sufficiency of the affidavit. If the affidavit  
36 is found to be legally sufficient, the district court judge shall order the  
37 director to assign the case to another administrative law judge or to an  
38 assistant director.

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

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

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

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

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

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

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

15 (f) (1) ~~Any~~*In any claim that has not proceeded to final a regular*  
16 *hearing, a settlement hearing, or an agreed award under the workers*  
17 *compensation act within five~~three~~ years from the date of filing an*  
18 *application for hearing pursuant to K.S.A. 44-534, and amendments*  
19 *thereto, shall be dismissed by the administrative law judge for lack of*  
20 *prosecution the employer shall be permitted to file with the division an*  
21 *application for dismissal based on lack of prosecution. The matter shall*  
22 *be set for hearing with notice to the claimant's attorney, if the claimant is*  
23 *represented, or to the claimant's last known address. The administrative*  
24 *law judge may grant an extension for good cause shown, which shall be*  
25 *conclusively presumed in the event that the claimant has not reached*  
26 *maximum medical improvement, provided such motion to extend is filed*  
27 *prior to the five~~three~~ year limitation provided for herein. If the claimant*  
28 *cannot establish good cause, the claim shall be dismissed with prejudice*  
29 *by the administrative law judge for lack of prosecution. Such dismissal*  
30 *shall be considered a final disposition at a full hearing on the claim for*  
31 *purposes of employer reimbursement from the fund pursuant to*  
32 *subsection (b) of K.S.A. 44-534a, and amendments thereto.*

33 (2) *In any claim which has not proceeded to regular hearing within*  
34 *one year from the date of a preliminary award denying compensability of*  
35 *the claim, the employer shall be permitted to file with the division an*  
36 *application for dismissal based on lack of prosecution. The matter shall*  
37 *be set for hearing with notice to the claimant's attorney, if the claimant is*  
38 *represented, or to the claimant's last known address. Unless the claimant*  
39 *can prove a good faith reason for delay, the claim shall be dismissed with*  
40 *prejudice by the administrative law judge. Such dismissal shall be*  
41 *considered a final disposition at a full hearing on the claim for purposes*  
42 *of employer reimbursement from the fund pursuant to subsection (b) of*  
43 *K.S.A. 44-534a, and amendments thereto.*

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

3 Sec. 19. K.S.A. 44-525 is hereby amended to read as follows: 44-  
4 525. (a) Every finding or award of compensation shall be in writing  
5 signed and acknowledged by the administrative law judge and shall  
6 specify the amount due and unpaid by the employer to the employee up to  
7 the date of the award, if any, and the amount of the payments thereafter to  
8 be paid by the employer to the employee, if any, and the length of time  
9 such payment shall continue. *No award shall include the right to future*  
10 *medical treatment, unless it is proved by the claimant that it is more*  
11 *probable than not that future medical treatment, as defined in subsection*  
12 *(e) of K.S.A. 44-510h, and amendments thereto, will be required as a*  
13 *result of the work-related injury.* The award of the administrative law  
14 judge shall be effective the day following the date noted in the award.

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

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

29 Sec. 20. K.S.A. 44-528 is hereby amended to read as follows: 44-  
30 528. ~~(a) Any award or modification thereof agreed upon by the parties,~~  
31 ~~Except lump-sum settlements approved by the director or administrative~~  
32 ~~law judge, whether the award provides for compensation into the future~~  
33 ~~or whether it does not, any award or modification thereof may be~~  
34 reviewed by the administrative law judge for good cause shown upon the  
35 application of the employee, employer, dependent, insurance carrier or  
36 any other interested party. In connection with such review, the  
37 administrative law judge may appoint one or two health care providers to  
38 examine the employee and report to the administrative law judge. The  
39 administrative law judge shall hear all competent evidence offered and if  
40 the administrative law judge finds that the award has been obtained by  
41 fraud or undue influence, that the award was made without authority or as  
42 a result of serious misconduct, that the award is excessive or inadequate  
43 or that the functional impairment or work disability of the employee has

1 increased or diminished, the administrative law judge may modify such  
2 award, or reinstate a prior award, ~~upon such terms as may be just, by~~  
3 ~~increasing or diminishing the compensation subject to the limitations~~  
4 ~~provided in the workers compensation act pursuant to the provisions set~~  
5 ~~forth in K.S.A. 44-510b, 44-510c, 44-510d or 44-510e, and amendments~~  
6 ~~thereto, as may be applicable.~~

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

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

21 (d) Any modification of an award under this section on the basis that  
22 the functional impairment or work disability of the employee has  
23 increased or diminished shall be effective as of the date that the increase  
24 or diminishment actually occurred, except that in no event shall the  
25 effective date of any such modification be more than six months prior to  
26 the date the application was made for review and modification under this  
27 section.

28 Sec. 21. K.S.A. 44-531 is hereby amended to read as follows: 44-  
29 531. (a) Where all parties agree to the payment of all or any part of  
30 compensation due under the workers compensation act or under any  
31 award or judgment, and where it has been determined at a hearing before  
32 the administrative law judge that it is for the best interest of the injured  
33 employee or the dependents of a deceased employee, or that it will avoid  
34 undue expense, litigation or hardship to any party or parties, the  
35 administrative law judge may permit the employer to redeem all or any  
36 part of the employer's liability under the workers compensation act by the  
37 payment of compensation in a lump-sum; ~~except that no agreement for~~  
38 ~~payment of compensation in a lump sum shall be approved for nine~~  
39 ~~months after an employee has returned to work in cases in which the~~  
40 ~~employee, who would otherwise be entitled to compensation for work~~  
41 ~~disability, is not entitled to work disability compensation because of~~  
42 ~~being returned to work at a comparable wage by the employer who~~  
43 ~~employed the worker at the time of the injury giving rise to the claim~~

1 ~~being settled.~~ The employer shall be entitled to an 8% discount except as  
2 provided in subsection (a) of K.S.A. 44-510b, and amendments thereto on  
3 the amount of any such lump-sum payment that is not yet due at the time  
4 of the award. Upon paying such lump-sum the employer shall be released  
5 and discharged of and from all liability under the workers compensation  
6 act for that portion of the employer's liability redeemed under this  
7 section.

8 (b) No lump-sum awards, unless agreed to by the parties, shall be  
9 rendered under the workers compensation act except: (1) As provided in  
10 subsection (a) of this section, (2) as provided in subsection (a) K.S.A. 44-  
11 510b, and amendments thereto, (3) in cases involving compensation due  
12 the employee at the time the award is rendered as provided in K.S.A. 44-  
13 525, and amendments thereto and in cases of past due compensation as  
14 provided in K.S.A. 44-529, and amendments thereto.

15 (c) *The parties, by agreement and with approval of an*  
16 *administrative law judge, may enter into a compromise lump-sum*  
17 *settlement in either permanent total or permanent partial disability cases*  
18 *which prorates the lump-sum settlement over the life expectancy of the*  
19 *injured worker. When such an agreement has been approved, neither the*  
20 *weekly compensation rate paid throughout the case nor the maximum*  
21 *statutory weekly rate applicable to the injury shall apply. No*  
22 *compensation rate shall exceed the maximum statutory weekly rate as of*  
23 *the date of the injury. Instead, the prorated rate set forth in the approved*  
24 *settlement documents shall control and become the rate for that case.*  
25 *This section shall be retroactive in effect.*

26 Sec. 22. K.S.A. 44-532a is hereby amended to read as follows: 44-  
27 532a. (a) If an employer has no insurance to secure the payment of  
28 compensation *or has insufficiently funded a self-insurance bond*, as  
29 provided in subsection (b) (1) *and* (2) of K.S.A. 44-532, and amendments  
30 thereto, and such employer is financially unable to pay compensation to  
31 an injured worker as required by the workers compensation act, or such  
32 employer cannot be located and required to pay such compensation, the  
33 injured worker may apply to the director for an award of the  
34 compensation benefits, including medical compensation, to which such  
35 injured worker is entitled, to be paid from the workers compensation  
36 fund. Whenever a worker files an application under this section, the  
37 matter shall be assigned to an administrative law judge for hearing. If the  
38 administrative law judge is satisfied as to the existence of the conditions  
39 prescribed by this section, the administrative law judge may make an  
40 award, or modify an existing award, and prescribe the payments to be  
41 made from the workers compensation fund as provided in K.S.A. 44-569,  
42 and amendments thereto. The award shall be certified to the  
43 commissioner of insurance, and upon receipt thereof, the commissioner

1 of insurance shall cause payment to be made to the worker in accordance  
2 therewith.

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

9 Sec. 23. K.S.A. 44-534a is hereby amended to read as follows: 44-

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

32 (2) Such preliminary hearing shall be summary in nature and shall  
33 be held by an administrative law judge in any county designated by the  
34 administrative law judge, and the administrative law judge shall exercise  
35 such powers as are provided for the conduct of full hearings on claims  
36 under the workers compensation act. Upon a preliminary finding that the  
37 injury to the employee is compensable and in accordance with the facts  
38 presented at such preliminary hearing, the administrative law judge may  
39 make a preliminary award of medical compensation and temporary total  
40 disability compensation to be in effect pending the conclusion of a full  
41 hearing on the claim, except that if the employee's entitlement to medical  
42 compensation or temporary total disability compensation is disputed or  
43 there is a dispute as to the compensability of the claim, no preliminary

1 award of benefits shall be entered without giving the employer the  
2 opportunity to present evidence, including testimony, on the disputed  
3 issues. A finding with regard to a disputed issue of whether the employee  
4 suffered an ~~accidental~~ *accident, repetitive trauma or resulting injury*,  
5 whether the injury arose out of and in the course of the employee's  
6 employment, whether notice is given ~~or claim timely made~~, or whether  
7 certain defenses apply, shall be considered jurisdictional, and subject to  
8 review by the board. Such review by the board shall not be subject to  
9 judicial review. If an appeal from a preliminary order is perfected under  
10 this section, such appeal shall not stay the payment of medical  
11 compensation and temporary total disability compensation from the date  
12 of the preliminary award. If temporary total compensation is awarded,  
13 such compensation may be ordered paid from the date of filing the  
14 application, except that if the administrative law judge finds from the  
15 evidence presented that there were one or more periods of temporary total  
16 disability prior to such filing date, temporary total compensation may be  
17 ordered paid for all periods of temporary total disability prior to such date  
18 of filing. The decision in such preliminary hearing shall be rendered  
19 within five days of the conclusion of such hearing. Except as provided in  
20 this section, no such preliminary findings or preliminary awards shall be  
21 appealable by any party to the proceedings, and the same shall not be  
22 binding in a full hearing on the claim, but shall be subject to a full  
23 presentation of the facts.

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



1 carrier within one year of the final award.

2 Sec. 24. K.S.A. 44-536 is hereby amended to read as follows: 44-  
3 536. (a) With respect to any and all proceedings in connection with any  
4 initial or original claim for compensation, no claim of any attorney for  
5 services rendered in connection with the securing of compensation for an  
6 employee or the employee's dependents, whether secured by agreement,  
7 order, award or a judgment in any court shall exceed a reasonable amount  
8 for such services or 25% of the amount of compensation recovered and  
9 paid, whichever is less, in addition to actual expenses incurred, and  
10 subject to the other provisions of this section. Except as hereinafter  
11 provided in this section, in death cases, total disability and partial  
12 disability cases, the amount of attorney fees shall not exceed 25% of the  
13 sum which would be due under the workers compensation act beyond 415  
14 weeks of permanent total disability based upon the employee's average  
15 ~~gross~~ weekly wage prior to the date of the accident *or injury* and subject  
16 to the maximum weekly benefits provided in K.S.A. 44-510c, and  
17 amendments thereto.

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

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

43 (2) the time and labor required, the novelty and difficulty of the

- 1 questions involved and the skill requisite to perform the legal services  
2 properly;
- 3 (3) the likelihood, if apparent to the employee or the employee's  
4 dependents, that the acceptance of the particular case will preclude other  
5 employment by the attorney;
- 6 (4) the fee customarily charged in the locality for similar legal  
7 services;
- 8 (5) the amount of compensation involved and the results obtained;
- 9 (6) the time limitations imposed by the employee, by the employee's  
10 dependents or by the circumstances;
- 11 (7) the nature and length of the professional relationship with the  
12 employee or the employee's dependents; and
- 13 (8) the experience, reputation and ability of the attorney or attorneys  
14 performing the services.
- 15 (c) No attorney fees shall be charged with respect to compensation  
16 for medical expenses, except where an allowance is made for proposed or  
17 future treatment as a part of a compromise settlement. No attorney fees  
18 shall be charged with respect to vocational rehabilitation benefits.
- 19 (d) No attorney fees shall be charged in connection with any  
20 temporary total disability compensation unless the payment of such  
21 compensation in the proper amount is refused, or unless such  
22 compensation is terminated by the employer and the payment of such  
23 compensation is obtained or reinstated by the efforts of the attorney,  
24 whether by agreement, settlement, award or judgment.
- 25 (e) With regard to any claim where there is no dispute as to any of  
26 the material issues prior to representation of the claimant or claimants by  
27 an attorney, or where the amount to be paid for compensation does not  
28 exceed the written offer made to the claimant or claimants by the  
29 employer prior to execution of a written contract between the employee  
30 and an attorney, the fees to any such attorney shall not exceed either the  
31 sum of \$250 or a reasonable fee for the time actually spent by the  
32 attorney, as determined by the director, whichever is greater, exclusive of  
33 reasonable attorney fees for any representation by such attorney in  
34 reference to any necessary probate proceedings. With regard to any claim  
35 where the amount to be paid for compensation does exceed the written  
36 offer made prior to representation, fees for services rendered by an  
37 attorney shall not exceed the lesser of (1) a reasonable amount for such  
38 services; (2) an amount equal to the total of 50% of that portion of the  
39 amount of compensation recovered and paid, which is in excess of the  
40 amount of compensation offered to the employee by the employer prior to  
41 the execution of a written contract between the employee and the  
42 attorney; or (3) 25% of the total amount of compensation recovered and  
43 paid as described in subsection (a).

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

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

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

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

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

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

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

42 Sec. 25. K.S.A. 2010 Supp. 44-552 is hereby amended to read as  
43 follows: 44-552. (a) The director with the approval of the secretary of

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

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

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

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

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

41 Sec. 26. K.S.A. 44-5a01 is hereby amended to read as follows: 44-  
42 5a01. (a) Where the employer and employee or workman are subject by  
43 law or election to the provisions of the workmen's compensation act, the

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

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

39 (c) In no case shall an employer be liable for compensation under  
40 this section unless disablement results within one (1) year or death results  
41 within three (3) years in case of silicosis, or one (1) year in case of any  
42 other occupational disease, after the last injurious exposure to the hazard  
43 of such disease in such employment, or, in case of death, unless death

1 follows continuous disability from such disease, commencing within the  
2 period above limited, for which compensation has been paid or awarded  
3 or timely claim made as provided in the workmen's compensation act,  
4 and results within seven (7) years after such last exposure. Where  
5 payments have been made on account of any disablement from which  
6 death shall thereafter result such payments shall be deducted from the  
7 amount of liability provided by law in case of death. The time limit  
8 prescribed by this section shall not apply in the case of an employee  
9 whose disablement or death is due to occupational exposure to ionizing  
10 radiation.

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

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

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

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

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

36 Sec. 28. K.S.A. 44-503a, 44-510a, 44-510c, 44-510d, 44-510e, 44-  
37 510f, 44-515, 44-516, 44-520, 44-520a, 44-525, 44-528, 44-531, 44-532a,  
38 44-534a, 44-536 and 44-5a01 and K.S.A. 2010 Supp. 44-501, 44-508, 44-  
39 510b, 44-510h, 44-510k, 44-511, 44-523, 44-552 and 44-596 are hereby  
40 repealed.

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