

As Amended by Senate Committee of the Whole

As Amended by Senate Committee

Session of 2013

SENATE BILL No. 187

By Committee on Commerce

2-13

Proposed Amendments for SB 187
As Amended by Senate Committee of the
Whole
March 20, 2013
Prepared by Ken Willke
Office of the Revisor of Statutes

1 AN ACT concerning workers; relating to the workers compensation and
2 employment security boards nominating committee; administrative law
3 judge appointments; workers compensation appeals board; amending law
4 K.S.A. 2012 Supp. 44-551, 44-555c [and 44-709] and repealing the
5 existing sections. 44-508,
6 K.S.A. 44-510j and 44-709 and 75-5708

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

8 Section 1. K.S.A. 2012 Supp. 44-551 is hereby amended to read as
9 follows: 44-551. (a) The duties of the assistant directors of workers
10 compensation may include but not be limited to acting in the capacity of
11 an administrative law judge.

12 (b) Each administrative law judge shall be an attorney regularly
13 admitted to practice law in Kansas. Such attorney shall have at least five
14 years of experience as an attorney, with at least one year of experience
15 practicing law in the area of workers compensation.

16 (c) Except as provided in subsection (f), the annual salary of each
17 administrative law judge shall be an amount equal to ~~75%~~ 85% of the
18 annual salary paid by the state to a district judge, other than a district judge
19 designated as a chief judge. Administrative law judges shall devote full
20 time to the duties of such office and shall not engage in the private practice
21 of law during their term of office. No administrative law judge may
22 receive additional compensation for official services performed by the
23 administrative law judge. Each administrative law judge shall be
24 reimbursed for expenses incurred in the performance of such official duties
25 under the same circumstances and to the same extent as district judges are
26 reimbursed for such expenses.

27 (d) Applications for administrative law judge positions shall be
28 submitted to the director of workers compensation. The director shall
29 determine if an applicant meets the qualifications for an administrative law
30 judge as prescribed in subsection (b). Qualified applicants for a position of
31 administrative law judge shall be submitted by the director to the workers
32 compensation ~~administrative law judge nominating and review committee~~
33 ~~and employment security boards nominating committee~~ for consideration.
34 (e) ~~There is hereby established the workers compensation~~

1 determinations by the board shall be approved in writing by ~~at least three~~
2 ~~board members a majority comprised of not less than three of the members~~
3 ~~hearing the case at least three board members.~~ Whenever the board enters
4 a final order in any proceeding, the board shall make written findings of
5 fact and conclusions of law forming the basis of the board's determination
6 and final order. The findings of fact and conclusions of law of the board
7 shall be made a part of the final order. The board shall mail a copy of the
8 final order of the board to all parties to the proceeding within three days
9 following the issuance of the final order.

10 Sec. 3. K.S.A. 2012 Supp. 44-709 is hereby amended to read as
11 follows: 44-709. (a) *Filing.* Claims for benefits shall be made in
12 accordance with rules and regulations adopted by the secretary. The
13 secretary shall furnish a copy of such rules and regulations to any
14 individual requesting them. Each employer shall post and maintain printed
15 statements furnished by the secretary without cost to the employer in
16 places readily accessible to individuals in the service of the employer.

17 (b) *Determination.* (1) Except as otherwise provided in this
18 subsection (b)(1), a representative designated by the secretary, and
19 hereinafter referred to as an examiner, shall promptly examine the claim
20 and, on the basis of the facts found by the examiner, shall determine
21 whether or not the claim is valid. If the examiner determines that the claim
22 is valid, the examiner shall determine the first day of the benefit year, the
23 weekly benefit amount and the total amount of benefits payable with
24 respect to the benefit year. If the claim is determined to be valid, the
25 examiner shall send a notice to the last employing unit who shall respond
26 within 10 days by providing the examiner all requested information
27 including all information required for a decision under K.S.A. 44-706, and
28 amendments thereto. The information may be submitted by the employing
29 unit in person at an employment office of the secretary or by mail, by
30 telefacsimile machine or by electronic mail. If the required information is
31 not submitted or postmarked within a response time limit of 10 days after
32 the examiner's notice was sent, the employing unit shall be deemed to have
33 waived its standing as a party to the proceedings arising from the claim
34 and shall be barred from protesting any subsequent decisions about the
35 claim by the secretary, a referee, the board of review or any court, except
36 that the employing unit's response time limit may be waived or extended
37 by the examiner or upon appeal, if timely response was impossible due to
38 excusable neglect. In any case in which the payment or denial of benefits
39 will be determined by the provisions of subsection (d) of K.S.A. 44-706,
40 and amendments thereto, the examiner shall promptly transmit the claim to
41 a special examiner designated by the secretary to make a determination on
42 the claim after the investigation as the special examiner deems necessary.
43 The parties shall be promptly notified of the special examiner's decision

employment security

1 and any party aggrieved by the decision may appeal to the referee as
2 provided in subsection (c). The claimant and the claimant's most recent
3 employing unit shall be promptly notified of the examiner's or special
4 examiner's decision.

5 (2) The examiner may for good cause reconsider the examiner's
6 decision and shall promptly notify the claimant and the most recent
7 employing unit of the claimant, that the decision of the examiner is to be
8 reconsidered, except that no reconsideration shall be made after the
9 termination of the benefit year.

10 (3) Notwithstanding the provisions of any other statute, a decision of
11 an examiner or special examiner shall be final unless the claimant or the
12 most recent employing unit of the claimant files an appeal from the
13 decision as provided in subsection (c). The appeal must be filed within 16
14 calendar days after the mailing of notice to the last known addresses of the
15 claimant and employing unit or, if notice is not by mail, within 16 calendar
16 days after the delivery of the notice to the parties.

17 (c) *Appeals.* Unless the appeal is withdrawn, a referee, after affording
18 the parties reasonable opportunity for fair hearing, shall affirm or modify
19 the findings of fact and decision of the examiner or special examiner. The
20 parties shall be duly notified of the referee's decision, together with the
21 reasons for the decision. The decision shall be final, notwithstanding the
22 provisions of any other statute, unless a further appeal to the board of
23 review is filed within 16 calendar days after the mailing of the decision to
24 the parties' last known addresses or, if notice is not by mail, within 16
25 calendar days after the delivery of the decision.

26 (d) *Referees.* The secretary shall appoint, in accordance with
27 subsection (c) of K.S.A. 44-714, and amendments thereto, one or more
28 referees to hear and decide disputed claims.

29 (e) *Time, computation and extension.* In computing the period of time
30 for an employing unit response or for appeals under this section from the
31 examiner's or the special examiner's determination or from the referee's
32 decision, the day of the act, event or default from which the designated
33 period of time begins to run shall not be included. The last day of the
34 period shall be included unless it is a Saturday, Sunday or legal holiday, in
35 which event the period runs until the end of the next day which is not a
36 Saturday, Sunday or legal holiday.

37 (f) *Board of review.* (1) There is hereby created [a board of review,
38 hereinafter referred to as the board, consisting of three members. Except as
39 provided by paragraph (2) of this subsection, Each member of the board
40 shall be appointed for a term of four years as provided in this subsection.

41 Two members shall be appointed by the governor, subject to confirmation
42 by the senate as provided in K.S.A. 75-4315b, and amendments thereto.
43 Except as provided by K.S.A. 46-2601, and amendments thereto, no

employment security

an employment security

1 person appointed to the board, whose appointment is subject to
 2 confirmation by the senate, shall exercise any power, duty or function as a
 3 member until confirmed by the senate. One member shall be representative
 4 of employers, one member shall be representative of employers, and one
 5 member shall be representative of the public in general. The appointment
 6 of the employee representative member of the board shall be made by the
 7 governor from a list of three nominations submitted by the Kansas A.F.L.
 8 C.I.O. The appointment of the employer representative member of the
 9 board shall be made by the governor from a list of three nominations
 10 submitted by the Kansas chamber of commerce and industry. The
 11 appointment of the public representative member of the board, who,
 12 because of vocation, occupation or affiliation may be deemed not to be
 13 representative of either management or labor, shall be made by the
 14 members appointed by the governor as employee representative and
 15 employer representative. If the two members do not agree and fail to make
 16 the appointment of the public member within 30 days after the expiration
 17 of the public members term of office, the governor shall appoint the
 18 representative of the public. Not more than two members of the board shall
 19 belong to the same political party.

20 (2) The terms of members who are serving on the board on the
 21 effective date of this act shall expire on March 15 of the year in which
 22 such members term would have expired under the provisions of this
 23 section prior to amendment by this act. Thereafter, members shall be
 24 appointed for terms of four years and until their successors are appointed
 25 and confirmed. When a vacancy on the employment security board of
 26 review occurs, the nominating committee established under K.S.A. 44-551,
 27 and amendments thereto, shall convene and submit a nominee to the
 28 governor for appointment to each vacancy on the board of review, subject
 29 to confirmation by the senate as provided by K.S.A. 75-4315b, and
 30 amendments thereto. The governor shall either: (A) Accept and submit to
 31 the senate for confirmation the person nominated by the nominating
 32 committee; or (B) reject the nomination and request the nominating
 33 committee to nominate another person for that position. Except as
 34 provided by K.S.A. 46-2601, and amendments thereto, no person
 35 appointed to the ~~board~~ whose appointment is subject to confirmation by
 36 the senate, shall exercise any power, duty or function as a member until
 37 confirmed by the senate.

38 (3) ~~Not~~ ~~board~~ member shall serve more than two consecutive terms.

39 (3)(4) Each member of the board shall serve until a successor has
 40 been appointed and confirmed. Any vacancy in the membership of the
 41 board occurring prior to expiration of a term shall be filled by appointment
 42 for the unexpired term in the same manner as provided for original
 43 appointment of the member. Each member shall be appointed as

employment security

employment security board of review

of the employment security board of review

employment security

1 ~~representative of the same special interest group represented by the~~
2 ~~predecessor of the member:~~

employment security board of review

3 (4)(5) Each member of the [board] shall be entitled to receive as
4 compensation for the member's services at the rate of \$15,000 per year,
5 together with the member's travel and other necessary expenses actually
6 incurred in the performance of the member's official duties in accordance
7 with rules and regulations adopted by the secretary. Members'
8 compensation and expenses shall be paid from the employment security
9 administration fund.

employment security board of review

10 (5)(6) The [board] shall organize annually by the election of a
11 chairperson from among its members. The chairperson shall serve in that
12 capacity for a term of one year and until a successor is elected. The board
13 shall meet on the first Monday of each month or on the call of the
14 chairperson or any two members of the board at the place designated. The
15 secretary of labor shall appoint an executive secretary of the board and the
16 executive secretary shall attend the meetings of the board.

employment security board of review

17 (6)(7) The [board], on its own motion, may affirm, modify or set aside
18 any decision of a referee on the basis of the evidence previously submitted
19 in the case; may direct the taking of additional evidence; or may permit
20 any of the parties to initiate further appeal before it. The board shall permit
21 such further appeal by any of the parties interested in a decision of a
22 referee which overrules or modifies the decision of an examiner. The board
23 may remove to itself the proceedings on any claim pending before a
24 referee. Any proceedings so removed to the board shall be heard in
25 accordance with the requirements of subsection (c). The board shall
26 promptly notify the interested parties of its findings and decision.

employment security board of review

27 (7)(8) Two members of the [board] shall constitute a quorum and no
28 action of the board shall be valid unless it has the concurrence of at least
29 two members. A vacancy on the board shall not impair the right of a
30 quorum to exercise all the rights and perform all the duties of the board.

employment security board of review

31 (g) Procedure. The manner in which disputed claims are presented,
32 the reports on claims required from the claimant and from employers and
33 the conduct of hearings and appeals shall be in accordance with rules of
34 procedure prescribed by the [board] for determining the rights of the parties,
35 whether or not such rules conform to common law or statutory rules of
36 evidence and other technical rules of procedure. A full and complete
37 record shall be kept of all proceedings and decisions in connection with a
38 disputed claim. All testimony at any hearing upon a disputed claim shall be
39 recorded, but need not be transcribed unless the disputed claim is further
40 appealed. In the performance of its official duties, the board shall have
41 access to all of the records which pertain to the disputed claim and are in
42 the custody of the secretary of labor and shall receive the assistance of the
43 secretary upon request.

(h) *Witness fees.* Witnesses subpoenaed pursuant to this section shall be allowed fees and necessary travel expenses at rates fixed by the board. Such fees and expenses shall be deemed a part of the expense of administering this act.

employment security board of review

(i) *Court review.* Any action of the [board] is subject to review in accordance with the Kansas judicial review act. No bond shall be required for commencing an action for such review. In the absence of an action for such review, the action of [the] board shall become final 16 calendar days after the date of the mailing of the decision. In addition to those persons having standing pursuant to K.S.A. 77-611, and amendments thereto, the examiner shall have standing to obtain judicial review of an action of [the] board. The review proceeding, and the questions of law certified, shall be heard in a summary manner and shall be given precedence over all other civil cases except cases arising under the workers compensation act.

such

employment security

(j) Any finding of fact or law, judgment, determination, conclusion or final order made by the board of review or any examiner, special examiner, referee or other person with authority to make findings of fact or law pursuant to the employment security law is not admissible or binding in any separate or subsequent action or proceeding, between a person and a present or previous employer brought before an arbitrator, court or judge of the state or the United States, regardless of whether the prior action was between the same or related parties or involved the same facts.

employment security board of review

(k) In any proceeding or hearing conducted under this section, a party to the proceeding or hearing may appear before a referee or the board either personally or by means of a designated representative to present evidence and to state the position of the party. Hearings may be conducted in person, by telephone or other means of electronic communication. The hearing shall be conducted by telephone or other means of electronic communication if none of the parties requests an in-person hearing. If only one party requests an in-person hearing, the referee shall have the discretion of requiring all parties to appear in person or allow the party not requesting an in-person hearing to appear by telephone or other means of electronic communication. The notice of hearing shall include notice to the parties of their right to request an in-person hearing and instructions on how to make the request.

See Attached Insert

, 44-709 and 75-5708

Sec. [4-1] K.S.A. 2012 Supp. 44-551, 44-555c [and 44-709] are hereby repealed.

44-508,

Sec. [5-1] This act shall take effect and be in force from and after its publication in the statute book.

7.

6.

39

38

37

36

35

34

33

32

Sec. 3. K.S.A. 2012 Supp. 44-508 is hereby amended to read as follows: 44-508. As used in the workers compensation act:

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

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

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

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

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

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

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

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

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

(d) "Accident" means an undesignated, sudden and unexpected traumatic event, usually of an afflictive or unfortunate nature and often, but not necessarily, accompanied by a manifestation of force. An accident shall be identifiable by time and place of occurrence, produce at the time symptoms of an injury, and occur during a single work shift. The accident must be the prevailing factor in causing the injury. "Accident" shall in no case be construed to include repetitive trauma in any form.

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

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

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

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

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

- (4) the last day worked, if the employee no longer works for the employer against whom benefits are sought. In no case shall the date of accident be later than the last date worked.
- (f) (1) "Personal injury" and "injury" mean any lesion or change in the physical structure of the body, causing damage or harm thereto. Personal injury or injury may occur only by accident, repetitive trauma or occupational disease as those terms are defined.
- (2) An injury is compensable only if it arises out of and in the course of employment. An injury is not compensable because work was a triggering or precipitating factor. An injury is not compensable solely because it aggravates, accelerates or exacerbates a preexisting condition or renders a preexisting condition symptomatic.
- (A) An injury by repetitive trauma shall be deemed to arise out of employment only if:
- (i) The employment exposed the worker to an increased risk or hazard which the worker would not have been exposed in normal non-employment life;
- (ii) the increased risk or hazard to which the employment exposed the worker is the prevailing factor in causing the repetitive trauma; and
- (iii) the repetitive trauma is the prevailing factor in causing both the medical condition and resulting disability or impairment.
- (B) An injury by accident shall be deemed to arise out of employment only if:
- (1) There is a causal connection between the conditions under which the work is required to be performed and the resulting accident; and
- (2) the accident is the prevailing factor causing the injury, medical condition, and resulting disability or impairment.
- (3) (A) The words "arising out of and in the course of employment" as used in the workers compensation act shall not be construed to include:
- (i) Injury which occurred as a result of the natural aging process or by the normal activities of day-to-day living;
- (ii) accident or injury which arose out of a neutral risk with no particular employment or personal character;
- (iii) accident or injury which arose out of a risk personal to the worker; or
- (iv) accident or injury which arose either directly or indirectly from idiopathic causes.
- (B) The words "arising out of and in the course of employment" as used in the workers compensation act shall not be construed to include injuries to the employee occurring while the employee is on the way to assume the duties of employment or after leaving such duties, the proximate cause of which injury is not the employer's negligence. An employee shall not be construed as being on the way to assume the duties of employment or having left such duties at a time when the worker is on the premises owned or under the exclusive control of the employer or on the only available route to or from work which is a route involving a special risk or hazard connected with the nature of the employment that is not a risk or hazard to which the general public is exposed and which is a route not used by the public except in dealings with the employer. An employee shall not be construed as being on the way to assume the duties of employment, if the employee is a provider of emergency services responding to an emergency.
- (C) The words, "arising out of and in the course of employment" as used in the workers compensation act shall not be construed to include injuries to employees while engaged in recreational or social events under circumstances where the employee was

under no duty to attend and where the injury did not result from the performance of tasks related to the employee's normal job duties or as specifically instructed to be performed by the employer.

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

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

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

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

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

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

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

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

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

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

(q) "Group-funded self-insurance plan" includes each group-funded workers compensation pool, which is authorized to operate in this state under K.S.A. 44-581 through 44-592, and amendments thereto, each municipal group-funded pool under the Kansas

municipal group-funded pool act which is covering liabilities under the workers compensation act, and any other similar group-funded or pooled plan or arrangement that provides coverage for employer liabilities under the workers compensation act and is authorized by law.

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

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

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

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

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

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

Sec. 4. K.S.A. 44-510j is hereby amended to read as follows: 44-510j. When an employer's insurance carrier or a self-insured employer disputes all or a portion of a bill for services rendered for the care and treatment of an employee under this act, the following procedures apply:

(a) (1) The employer or carrier shall notify the service provider within 30 days of receipt of the bill of the specific reason for refusing payment or adjusting the bill. Such notice shall inform the service provider that additional information may be submitted with the bill and reconsideration of the bill may be requested. The provider shall send any request for reconsideration within 30 days of receiving written notice of the bill dispute. If the employer or carrier continues to dispute all or a portion of the bill after receiving additional information from the provider, the employer, carrier or provider may apply for an informal hearing before the director.

(2) If a provider sends a bill to such employer or carrier and receives no response within 30 days as allowed in subsection (a) and if a provider sends a second bill and receives no response within 60 days of the date the provider sent the first bill, the provider may apply for an informal hearing before the director.

(3) Payments shall not be delayed beyond 60 days for any amounts not in dispute. Acceptance by any provider of a payment amount which is less than the full amount charged for the services shall not affect the right to have a review of the claim for the outstanding or remaining amounts.

(b) The application for informal hearing shall include copies of the disputed bills, all correspondence concerning the bills and any additional written information the party deems appropriate. When anyone applies for an informal hearing before the director, copies of the application shall be sent to all parties to the dispute and the employee. Within 20 days of receiving the application for

informal hearing, the other parties to the dispute shall send any additional written information deemed relevant to the dispute to the director.

(c) The director or the director's designee shall hold the informal hearing to hear and determine all disputes as to such bills and interest due thereon. Evidence in the informal hearing shall be limited to the written submissions of the parties. The informal hearing may be held by electronic means. Any employer, carrier or provider may personally appear in or be represented at the hearing. If the parties are unable to reach a settlement regarding the dispute, the officer hearing the dispute shall enter an order so stating.

(d) After the entry of the order indicating that the parties have not settled the dispute after the informal hearing, the director shall schedule a formal hearing.

(1) Prior to the date of the formal hearing, the director may conduct a utilization review concerning the disputed bill. The director shall develop and implement, or contract with a qualified entity to develop and implement, utilization review procedures relating to the services rendered by providers and facilities, which services are paid for in whole or in part pursuant to the workers compensation act. The director may contract with one or more private foundations or organizations to provide utilization review of service providers pursuant to the workers compensation act. Such utilization review shall result in a report to the director indicating whether a provider improperly utilized or otherwise rendered or ordered unjustified treatment or services or that the fees for such treatment or services were excessive and a statement of the basis for the report's conclusions. After receiving the utilization review report, the director also may order a peer review. A copy of such reports shall be provided to all parties to the dispute at least 20 days prior to the formal hearing. No person shall be subject to civil liability for libel, slander or any other relevant tort cause of action by virtue of performing a peer or utilization review under contract with the director.

(2) The formal hearing shall be conducted by hearing officers, the medical administrator or both as appointed by the director. During the formal hearing parties to the dispute shall have the right to appear or be represented and may produce witnesses, including expert witnesses, and such other relevant evidence as may be otherwise allowed under the workers compensation act. If the director finds that a provider or facility has made excessive charges or provided or ordered unjustified treatment, services, hospitalization or visits, the provider or facility may, subject to the director's order, receive payment pursuant to this section from the carrier, employer or employee for the excessive fees or unjustified treatment, services, hospitalization or visits and such provider may be ordered to repay any fees or charges collected therefor. If it is determined after the formal hearing that a provider improperly utilized or otherwise rendered or ordered unjustified treatment or services or that the fees for such treatment or services were excessive, the director may provide a report to the licensing board of the service provider with full documentation of any such determination, except that no such report shall be provided until after judicial review if the order is appealed. Any decision rendered under this section may be reviewed by the workers compensation appeals board. A party must file a notice of appeal within 10 days of the issuance of any decision under this section. The record on appeal shall be limited only to the evidence presented to the hearing officer. The decision of the director shall be affirmed unless the board determines that the decision was not supported by substantial competent evidence.

(e) By accepting payment pursuant to this section for treatment or services rendered to an injured employee, the provider shall be deemed to consent to submitting all necessary records to substantiate the nature and necessity of the service or charge and other

information concerning such treatment to utilization review under this section. Such health care provider shall comply with any decision of the director pursuant to this section.

(f) Except as provided in K.S.A. 60-437 and amendments thereto and this section, findings and records which relate to utilization and peer review conducted pursuant to this section shall be privileged and shall not be subject to discovery, subpoena or other means of legal compulsion for release to any person or entity and shall not be admissible in evidence in any judicial or administrative proceeding, except those proceedings authorized pursuant to this section. In any proceedings where there is an application by an employee, employer, insurance carrier or the workers compensation fund for a hearing pursuant to K.S.A. 44-534a, and amendments thereto, for a change of medical benefits which has been filed after a health care provider, employer, insurance carrier or the workers compensation fund has made application to the medical services section of the division for the resolution of a dispute or matter pursuant to the provisions of this section, all reports, information, statements, memoranda, proceedings, findings and records which relate to utilization and peer review including the records of contract reviewers and findings and records of the medical services section of the division shall be admissible at the hearing before the administrative law judge on the issue of the medical benefits to which an employee is entitled.

(g) A provider may not improperly overcharge or charge for services which were not provided for the purpose of obtaining additional payment. Any dispute regarding such actions shall be resolved in the same manner as other bill disputes as provided by this section. Any violation of the provisions of this section or K.S.A. 44-510i, and amendments thereto, which is willful or which demonstrates a pattern of improperly charging or overcharging for services rendered pursuant to this act constitutes grounds for the director to impose a civil fine not to exceed \$5,000. Any civil fine imposed under this section shall be subject to review by the board. All moneys received for civil fines imposed under this section shall be deposited in the state treasury to the credit of the workers compensation fund.

(h) Any health care provider, nurse, physical therapist, any entity providing medical, physical or vocational rehabilitation services or providing reeducation or training pursuant to K.S.A. 44-510g and amendments thereto, medical supply establishment, surgical supply establishment, ambulance service or hospital which accept the terms of the workers compensation act by providing services or material thereunder shall be bound by the fees approved by the director and no injured employee or dependent of a deceased employee shall be liable for any charges above the amounts approved by the director. If the employer has knowledge of the injury and refuses or neglects to reasonably provide the services of a health care provider required by this act, the employee may provide the same for such employee, and the employer shall be liable for such expenses subject to the regulations adopted by the director. No action shall be filed in any court by a health care provider or other provider of services under this act for the payment of an amount for medical services or materials provided under the workers compensation act and no other action to obtain or attempt to obtain or collect such payment shall be taken by a health care provider or other provider of services under this act, including employing any collection service, until after final adjudication of any claim for compensation for which an application for hearing is filed with the director under K.S.A. 44-534 and amendments thereto. In the case of any such action filed in a court prior to the date an application is filed under K.S.A. 44-534 and amendments thereto, no judgment may be entered in any such cause and the action shall

be stayed until after the final adjudication of the claim. In the case of an action stayed hereunder, any award of compensation shall require any amounts payable for medical services or materials to be paid directly to the provider thereof plus an amount of interest at the rate provided by statute for judgments. No period of time under any statute of limitation, which applies to a cause of action barred under this subsection, shall commence or continue to run until final adjudication of the claim under the workers compensation act.

(i) As used in this section, unless the context or the specific provisions clearly require otherwise, "carrier" means a self-insured employer, an insurance company or a qualified group-funded workers compensation pool and "provider" means any health care provider, vocational rehabilitation service provider or any facility providing health care services or vocational rehabilitation services, or both, including any hospital.

Sec. 5. K.S.A. 2012 Supp. 75-5708 is hereby amended to read as follows: 75-5708. (a) There is hereby established within and as a part of the department of labor a division of workers compensation. The division shall be administered, under the supervision of the secretary of labor, by the director of workers compensation, who shall be the chief administrative officer of the division. The director of workers compensation shall be appointed by the secretary of labor and shall serve at the pleasure of the secretary. The director shall be in the unclassified service under the Kansas civil service act and shall receive an annual salary fixed by the secretary of labor, with the approval of the governor. The director of workers compensation shall be an attorney admitted to practice law in the state of Kansas. The director shall devote full time to the duties of such office and shall not engage in the private practice of law during the director's term of office.

(b) The director of workers compensation may appoint two assistant directors of workers compensation. The secretary of labor may appoint not to exceed 10 administrative law judges. Such assistant directors shall be in the classified service. Such administrative law judges shall be in the unclassified service under the Kansas civil service act unless an administrative law judge elects to stay in the classified service under subsection (g) of K.S.A. 44-551, and amendments thereto. The assistant directors shall act for and exercise the powers of the director of workers compensation to the extent authority to do so is delegated by the director. The assistant directors and administrative law judges shall be attorneys admitted to practice law in the state of Kansas, and shall have such powers, duties and functions as are assigned to them by the director or are prescribed by law. The assistant directors and administrative law judges shall devote full time to the duties of their offices and shall not engage in the private practice of law during their terms of office.

(c) Assistant directors shall be selected by the director of workers compensation, with the approval of the secretary of labor. Except as otherwise provided under K.S.A. 44-551, and amendments thereto, on and after July 1, ~~2006~~ 2013, administrative law judges shall be selected by the ~~administrative law judge nominating and review~~ workers compensation and employment security boards nominating committee and appointed by the secretary of labor. Each assistant director and administrative law judge shall be subject to either dismissal or suspension of up to 30 days for any of the following:

- (1) Failure to conduct oneself in a manner appropriate to the appointee's professional capacity;
- (2) Failure to perform duties as required by the workers compensation act; or
- (3) any reason set out for dismissal or suspension in the Kansas civil service act or rules and regulations adopted pursuant thereto.

No appointee shall be appointed, dismissed or suspended for political, religious or racial reasons or by reason of the appointee's sex.

