

As Amended by House Committee

As Amended by Senate Committee

Session of 2013

SENATE BILL No. 73

By Committee on Commerce

1-24

1 AN ACT concerning workers compensation, relating to administrative
2 duties assumed by the secretary of health and environment; legal status
3 requirements for compensation; administrative judge disqualification;
4 **notice of injury requirements**; limitation of actions; state workplace
5 health and safety program; amending K.S.A. 44-512, 44-557 and 44-
6 578 and K.S.A. 2012 Supp. 2-224a, 44-510d, 44-510e, **44-520**, 44-523,
7 44-532a, 44-575 and 44-577 and repealing the existing sections.
8

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

10 Section 1. K.S.A. 2012 Supp. 2-224a is hereby amended to read as
11 follows: 2-224a. (a) Notwithstanding the provisions of K.S.A. 44-576, and
12 amendments thereto, the state fair board is hereby authorized to purchase
13 workers compensation insurance from an admitted carrier. Any contract
14 for the purchase of workers compensation insurance entered into by the
15 state fair board shall be purchased in the manner prescribed for the
16 purchase of supplies, materials, equipment and contractual services as
17 provided in K.S.A. 75-3738 through 75-3744, and amendments thereto,
18 and any such contract having a premium or rate in excess of \$500 shall be
19 purchased on the basis of sealed bids. Such contract shall not be subject to
20 the provisions of K.S.A. 75-4101 through 75-4114 and K.S.A. 2012 Supp.
21 75-4125, and amendments thereto.

22 (b) If the state fair board enters into a contract for the purchase of
23 workers compensation insurance as described in subsection (a), from and
24 after the end of the payroll period in which such workers compensation
25 policy takes effect, the state fair board shall not be subject to the self-
26 insurance assessment prescribed by K.S.A. 44-576, and amendments
27 thereto, and the director of accounts and reports shall cease to transfer any
28 amounts for such self-assessment for the state fair board pursuant to such
29 statute, except that any moneys paid relating to existing claims with the
30 state workers compensation self-insurance fund made by the state fair
31 board shall be assessed to the state fair board until all such claims have
32 been closed and settled.

33 (c) Notwithstanding the provisions of K.S.A. 44-575, and
34 amendments thereto, if the state fair board enters into a contract for the

1 purchase of workers compensation insurance as described in subsection
2 (a), the state workers compensation self-insurance fund shall not be liable
3 for any compensation claims under the workers compensation act relating
4 to the state fair board and arising during the term of such contract, or for
5 any other amounts otherwise required to be paid under the workers
6 compensation act during the term of such contract.

7 (d) The state fair board shall notify ~~the secretary of administration~~
8 ~~and~~ the secretary of health and environment of the effective date of any
9 workers compensation policy acquired pursuant to this section.

10 Sec. 2. K.S.A. 2012 Supp. 44-510d is hereby amended to read as
11 follows: 44-510d. (a) Where disability, partial in character but permanent
12 in quality, results from the injury, the injured employee shall be entitled to
13 the compensation provided in K.S.A. 44-510h and 44-510i, and
14 amendments thereto. The injured employee may be entitled to payment of
15 temporary total disability as defined in K.S.A. 44-510c, and amendments
16 thereto, or temporary partial disability as defined in subsection (a)(1) of
17 K.S.A. 44-510e, and amendments thereto, provided that the injured
18 employee shall not be entitled to any other or further compensation for or
19 during the first week following the injury unless such disability exists for
20 three consecutive weeks, in which event compensation shall be paid for
21 the first week. Thereafter compensation shall be paid for temporary total or
22 temporary partial disability as provided in the following schedule, 66²/₃%
23 of the average weekly wages to be computed as provided in K.S.A. 44-
24 511, and amendments thereto, except that in no case shall the weekly
25 compensation be more than the maximum as provided for in K.S.A. 44-
26 510c, and amendments thereto.

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

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

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

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

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

36 (5) For the loss of a fourth finger, commonly called the little finger,
37 15 weeks.

38 (6) Loss of the first phalange of the thumb or of any finger shall be
39 considered to be equal to the loss of $\frac{1}{2}$ of such thumb or finger, and the
40 compensation shall be $\frac{1}{2}$ of the amount specified above. The loss of the
41 first phalange and any part of the second phalange of any finger, which
42 includes the loss of any part of the bone of such second phalange, shall be
43 considered to be equal to the loss of $\frac{2}{3}$ of such finger and the

1 compensation shall be $\frac{2}{3}$ of the amount specified above. The loss of the
2 first phalange and any part of the second phalange of a thumb which
3 includes the loss of any part of the bone of such second phalange, shall be
4 considered to be equal to the loss of the entire thumb. The loss of the first
5 and second phalanges and any part of the third proximal phalange of any
6 finger, shall be considered as the loss of the entire finger. Amputation
7 through the joint shall be considered a loss to the next higher schedule.

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

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

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

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

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

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

17 (13) For the loss of an arm, excluding the shoulder joint, shoulder
18 girdle, shoulder musculature or any other shoulder structures, 210 weeks,
19 and for the loss of an arm, including the shoulder joint, shoulder girdle,
20 shoulder musculature or any other shoulder structures, 225 weeks.

21 (14) For the loss of a foot, 125 weeks.

22 (15) For the loss of a lower leg, 190 weeks.

23 (16) For the loss of a leg, 200 weeks.

24 (17) For the loss of an eye, or the complete loss of the sight thereof,
25 120 weeks.

26 (18) Amputation or severance below the wrist shall be considered as
27 the loss of a hand. Amputation at the wrist and below the elbow shall be
28 considered as the loss of the forearm. Amputation at or above the elbow
29 shall be considered loss of the arm. Amputation below the ankle shall be
30 considered loss of the foot. Amputation at the ankle and below the knee
31 shall be considered as loss of the lower leg. Amputation at or above the
32 knee shall be considered as loss of the leg.

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

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

35 (21) Permanent loss of the use of a finger, thumb, hand, shoulder,
36 arm, forearm, toe, foot, leg or lower leg or the permanent loss of the sight
37 of an eye or the hearing of an ear, shall be equivalent to the loss thereof.
38 For the permanent partial loss of the use of a finger, thumb, hand,
39 shoulder, arm, toe, foot or leg, or the sight of an eye or the hearing of an
40 ear, compensation shall be paid as provided for in K.S.A. 44-510c, and
41 amendments thereto, per week during that proportion of the number of
42 weeks in the foregoing schedule provided for the loss of such finger,
43 thumb, hand, shoulder, arm, toe, foot or leg or the sight of an eye or the

1 hearing of an ear, which partial loss thereof bears to the total loss of a
2 finger, thumb, hand, shoulder, arm, toe, foot or leg, or the sight of an eye
3 or the hearing of an ear; but in no event shall the compensation payable
4 hereunder for such partial loss exceed the compensation payable under the
5 schedule for the total loss of such finger, thumb, hand, arm, toe, foot or
6 leg, or the sight of an eye or the hearing of an ear, exclusive of the healing
7 period. As used in this paragraph (21), "shoulder" means the shoulder
8 joint, shoulder girdle, shoulder musculature or any other shoulder
9 structures.

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

19 (23) Loss of or loss of use of a scheduled member shall be based
20 upon permanent impairment of function to the scheduled member as
21 determined using the ~~fourth~~ ~~sixth~~ **fourth** edition of the American medical
22 association guides to the evaluation of permanent impairment, if the
23 impairment is contained therein, *until January 1, 2015, but for injuries*
24 *occurring on and after January 1, 2015, shall be determined by using*
25 *the sixth edition of the American medical association guides to the*
26 *evaluation of permanent impairment, if the impairment is contained*
27 *therein.*

28 (24) Where an injury results in the loss of or loss of use of more than
29 one scheduled member within a single extremity, the functional
30 impairment attributable to each scheduled member shall be combined
31 pursuant to the ~~fourth~~ ~~sixth~~ **fourth** edition of the American medical
32 association guides for evaluation of permanent impairment *until January*
33 *1, 2015, but for injuries occurring on and after January 1, 2015, shall be*
34 *combined pursuant to the sixth edition of the American medical*
35 *association guides to the evaluation of permanent impairment,* and
36 compensation awarded shall be calculated to the highest scheduled
37 member actually impaired.

38 (c) Whenever the employee is entitled to compensation for a specific
39 injury under the foregoing schedule, the same shall be exclusive of all
40 other compensation except the benefits provided in K.S.A. 44-510h and
41 44-510i, and amendments thereto, and no additional compensation shall be
42 allowable or payable for any temporary or permanent, partial or total
43 disability, except that the director, in proper cases, may allow additional

1 compensation during the actual healing period, following amputation. The
2 healing period shall not be more than 10% of the total period allowed for
3 the scheduled injury in question nor in any event for longer than 15 weeks.
4 The return of the employee to the employee's usual occupation shall
5 terminate the healing period.

6 (d) The amount of compensation for permanent partial disability
7 under this section shall be determined by multiplying the payment rate by
8 the weeks payable. As used in this section:

9 (1) Payment rate shall be the lesser of: (A) The amount determined
10 by multiplying the average weekly wage of the worker prior to such injury
11 by $66\frac{2}{3}\%$; or (B) the maximum provided in K.S.A. 44-510c, and
12 amendments thereto;

13 (2) weeks payable shall be determined as follows: (A) Determine the
14 weeks of benefits provided for the injury on schedule; (B) determine the
15 weeks of temporary compensation paid by adding the amounts of
16 temporary total and temporary partial disability compensation paid and
17 dividing the sum by the payment rate above; (C) subtract the weeks of
18 temporary compensation calculated in (d)(2)(B) from the weeks of benefits
19 provided for the injury as determined in (d)(2)(A); *and* (D) multiply the
20 weeks as determined in (d)(2)(C) by the percentage of permanent partial
21 impairment of function as determined under subsection (b)(23).

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

26 Sec. 3. K.S.A. 2012 Supp. 44-510e is hereby amended to read as
27 follows: 44-510e. (a) In case of whole body injury resulting in temporary
28 or permanent partial general disability not covered by the schedule in
29 K.S.A. 44-510d, and amendments thereto, the employee shall receive
30 weekly compensation as determined in this subsection during the period of
31 temporary or permanent partial general disability not exceeding a
32 maximum of 415 weeks.

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

39 (2) (A) Permanent partial general disability exists when the employee
40 is disabled in a manner which is partial in character and permanent in
41 quality and which is not covered by the schedule in K.S.A. 44-510d, and
42 amendments thereto. Compensation for permanent partial general
43 disability shall also be paid as provided in this section where an injury

1 results in:

2 (i) The loss of or loss of use of a shoulder, arm, forearm or hand of
3 one upper extremity, combined with the loss of or loss of use of a shoulder,
4 arm, forearm or hand of the other upper extremity;

5 (ii) the loss of or loss of use of a leg, lower leg or foot of one lower
6 extremity, combined with the loss of or loss of use of a leg, lower leg or
7 foot of the other lower extremity; or

8 (iii) the loss of or loss of use of both eyes.

9 (B) The extent of permanent partial general disability shall be the
10 percentage of functional impairment the employee sustained on account of
11 the injury as established by competent medical evidence and based on the
12 ~~fourth~~ ~~sixth~~ **fourth** edition of the American medical association guides to
13 the evaluation of permanent impairment, if the impairment is contained
14 therein, ***until January 1, 2015, but for injuries occurring on and after***
15 ***January 1, 2015, based on the sixth edition of the American medical***
16 ***association guides to the evaluation of permanent impairment, if the***
17 ***impairment is contained therein.***

18 (C) An employee may be eligible to receive permanent partial general
19 disability compensation in excess of the percentage of functional
20 impairment ("work disability") if:

21 (i) The percentage of functional impairment determined to be caused
22 solely by the injury exceeds 7½% to the body as a whole or the overall
23 functional impairment is equal to or exceeds 10% to the body as a whole
24 in cases where there is preexisting functional impairment; and

25 (ii) the employee sustained a post-injury wage loss, as defined in
26 subsection (a)(2)(E) of K.S.A. 44-510e, and amendments thereto, of at
27 least 10% which is directly attributable to the work injury and not to other
28 causes or factors.

29 In such cases, the extent of work disability is determined by averaging
30 together the percentage of post-injury task loss demonstrated by the
31 employee to be caused by the injury and the percentage of post-injury
32 wage loss demonstrated by the employee to be caused by the injury.

33 (D) "Task loss" shall mean the percentage to which the employee, in
34 the opinion of a licensed physician, has lost the ability to perform the work
35 tasks that the employee performed in any substantial gainful employment
36 during the five-year period preceding the injury. The permanent
37 restrictions imposed by a licensed physician as a result of the work injury
38 shall be used to determine those work tasks which the employee has lost
39 the ability to perform. If the employee has preexisting permanent
40 restrictions, any work tasks which the employee would have been deemed
41 to have lost the ability to perform, had a task loss analysis been completed
42 prior to the injury at issue, shall be excluded for the purposes of
43 calculating the task loss which is directly attributable to the current injury.

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

15 (i) To establish post-injury wage loss, the employee must have the
16 legal capacity to enter into a valid contract of employment. ~~If an employee
17 is neither a United States citizen nor authorized to work in the United
18 States, it is conclusively presumed that the employee has no wage loss.~~
19 Wage loss caused by voluntary resignation or termination for cause shall in
20 no way be construed to be caused by the injury.

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

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

30 (F) The amount of compensation for whole body injury under this
31 section shall be determined by multiplying the payment rate by the weeks
32 payable. As used in this section: (1) The payment rate shall be the lesser
33 of: (A) The amount determined by multiplying the average weekly wage
34 of the worker prior to such injury by 66²/₃%; or (B) the maximum provided
35 in K.S.A. 44-510c, and amendments thereto; (2) weeks payable shall be
36 determined as follows: (A) Determine the weeks of temporary
37 compensation paid by adding the amounts of temporary total and
38 temporary partial disability compensation paid and dividing the sum by the
39 payment rate above; (B) subtract from 415 weeks the total number of
40 weeks of temporary compensation paid as determined in (F)(2)(A),
41 excluding the first 15 such weeks; and (3) multiply the number of weeks
42 as determined in (F)(2)(B) by the percentage of functional impairment
43 pursuant to subsection (a)(2)(B) or the percentage of work disability

1 pursuant to subsection (a)(2)(C), whichever is applicable.

2 (3) When an injured worker is eligible to receive an award of work
3 disability, compensation is limited to the value of the work disability as
4 calculated above. In no case shall functional impairment and work
5 disability be awarded together.

6 The resulting award shall be paid for the number of disability weeks at
7 the payment rate until fully paid or modified. In any case of permanent
8 partial disability under this section, the employee shall be paid
9 compensation for not to exceed 415 weeks following the date of such
10 injury. If there is an award of permanent disability as a result of the
11 compensable injury, there shall be a presumption that disability existed
12 immediately after such injury. Under no circumstances shall the period of
13 permanent partial disability run concurrently with the period of temporary
14 total or temporary partial disability.

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

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

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

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

1 employee or on any other account resulting from or growing out of the
2 injury or death of such employee.

3 Sec. 4. K.S.A. 44-512 is hereby amended to read as follows: 44-512.
4 Workers compensation payments shall be made at the same time, place and
5 in the same manner as the wages of the worker were payable at the time of
6 the accident, but upon the application of either party the administrative law
7 judge may modify such requirements in a particular case as the
8 administrative law judge deems just, except that: (a) Payments from the
9 workers compensation fund established by K.S.A. 44-566a, and
10 amendments thereto, shall be made in the manner approved by the
11 commissioner of insurance; (b) payments from the state workers
12 compensation self-insurance fund established by K.S.A. 44-575, and
13 amendments thereto, shall be made in a manner approved by the secretary
14 of ~~administration~~ *health and environment*; and (c) whenever temporary
15 total disability compensation is to be paid under the workers compensation
16 act, payments shall be made only in cash, by check or in the same manner
17 that the employee is normally compensated for salary or wages and not by
18 any other means, except that any such compensation may be paid by
19 warrant of the director of accounts and reports issued for payment of such
20 compensation from the workers compensation fund or the state workers
21 compensation self-insurance fund under the workers compensation act.

22 ***Sec. 5. K.S.A. 2012 Supp. 44-520 is hereby amended to read as***
23 ***follows: 44-520. (a) (1) Proceedings for compensation under the workers***
24 ***compensation act shall not be maintainable unless notice of injury by***
25 ***accident or repetitive trauma is given to the employer by the earliest of***
26 ***the following dates:***

27 ***(A) ~~30~~ 20 calendar days from the date of accident or the date of***
28 ***injury by repetitive trauma;***

29 ***(B) if the employee is working for the employer against whom***
30 ***benefits are being sought and such employee seeks medical treatment for***
31 ***any injury by accident or repetitive trauma, 20 calendar days from the***
32 ***date such medical treatment is sought; or***

33 ***(C) if the employee no longer works for the employer against whom***
34 ***benefits are being sought, 20 10 calendar days after the employee's last***
35 ***day of actual work for the employer.***

36 ***Notice may be given orally or in writing.***

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

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

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

10 ***(b) The notice required by subsection (a) shall be waived if the***
11 ***employee proves that: (1) The employer or the employer's duly***
12 ***authorized agent had actual knowledge of the injury; (2) the employer or***
13 ***the employer's duly authorized agent was unavailable to receive such***
14 ***notice within the applicable period as provided in paragraph (1) of***
15 ***subsection (a); or (3) the employee was physically unable to give such***
16 ***notice.***

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

19 Sec. 5- 6. K.S.A. 2012 Supp. 44-523 is hereby amended to read as
20 follows: 44-523. (a) The director, administrative law judge or board shall
21 not be bound by technical rules of procedure, but shall give the parties
22 reasonable opportunity to be heard and to present evidence, ~~insure~~ ensure
23 the employee and the employer an expeditious hearing and act reasonably
24 without partiality.

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

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

37 (2) for medical examination of the claimant if the party requesting the
38 extension explains in writing to the administrative law judge facts showing
39 that the party made a diligent effort but was unable to have a medical
40 examination conducted prior to the submission of the case by the claimant
41 but then only if the examination appointment was set and notice of the
42 appointment sent prior to submission by the claimant; or

43 (3) on application for good cause shown.

1 (c) When all parties have submitted the case to an administrative law
2 judge for an award, the administrative law judge shall issue an award
3 within 30 days. The administrative law judge shall not stay a decision due
4 to the absence of a submission letter. When the award is not entered in 30
5 days, any party to the action may notify the director that an award is not
6 entered and the director shall assign the matter to an assistant director or to
7 a special administrative law judge who shall enter an award forthwith
8 based on the evidence in the record, or the director, on the director's own
9 motion, may remove the case from the administrative law judge who has
10 not entered an award within 30 days following submission by the party
11 and assign it to an assistant director or to a special administrative law
12 judge for immediate decision based on the evidence in the record.

13 (d) Not less than 10 days prior to the first full hearing before an
14 administrative law judge, the administrative law judge shall conduct a
15 prehearing settlement conference for the purpose of obtaining stipulations
16 from the parties, determining the issues and exploring the possibility that
17 the parties may resolve those issues and reach a settlement prior to the first
18 full hearing.

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

38 (2) ~~If a party or a party's attorney files an affidavit alleging any of the~~
39 ~~grounds specified in subsection (e)(3), the chief judge shall at once~~
40 ~~determine, or refer the affidavit to another district court judge for prompt~~
41 ~~determination of, the legal sufficiency of the affidavit. If the affidavit is~~
42 ~~filed in a district court in which there is no other judge who is qualified to~~
43 ~~hear the matter, the chief judge shall at once notify the departmental justice~~

1 ~~for the district and request the appointment of another district judge to~~
 2 ~~determining the legal sufficiency of the affidavit. If the affidavit is found~~
 3 ~~to be legally sufficient, the district court judge shall order the director to~~
 4 ~~assign the case to another administrative law judge or to an assistant~~
 5 ~~director~~ *The party or a party's attorney shall file with the workers*
 6 *compensation board an affidavit alleging one or more of the grounds*
 7 *specified in subsection (e).*

8 *(3) If a majority of the workers compensation board finds legally*
 9 *sufficient grounds, it shall direct the director to assign the case to another*
 10 *administrative law judge.*

11 ~~(3) (4)~~ Grounds which may be alleged as provided in subsection (e)
 12 (2) for change of administrative law judge are that:

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

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

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

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

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

23 ~~(4) (5)~~ In any affidavit filed pursuant to subsection (e)(2), the recital
 24 of previous rulings or decisions by the administrative law judge on legal
 25 issues or concerning prior motions for change of administrative law judge
 26 filed by counsel or such counsel's law firm, pursuant to this subsection,
 27 shall not be deemed legally sufficient for any ~~believe~~ *belief* that bias or
 28 prejudice exists.

29 ~~(6) A determination by the workers compensation board as to the~~
 30 ~~legal sufficiency of the affidavit for recusal submitted above shall be~~
 31 ~~appealable to the court of appeals under the provision of K.S.A. 44-556,~~
 32 ~~and amendments thereto. Notwithstanding the provisions of K.S.A. 44-~~
 33 ~~556, and amendments thereto, no interlocutory appeal to the court of~~
 34 ~~appeals of the workers compensation appeals board's decision~~
 35 ~~regarding recusal shall be allowed while the resolution of the claim for~~
 36 ~~compensation is pending before an administrative law judge or the~~
 37 ~~workers compensation appeals board~~

38 (f) (1) In any claim that has not proceeded to a regular hearing, a
 39 settlement hearing, or an agreed award under the workers compensation
 40 act within three years from the date of filing an application for hearing
 41 pursuant to K.S.A. 44-534, and amendments thereto, the employer shall be
 42 permitted to file with the division an application for dismissal based on
 43 lack of prosecution. The matter shall be set for hearing with notice to the

1 claimant's attorney, if the claimant is represented, or to the claimant's last
2 known address. The administrative law judge may grant an extension for
3 good cause shown, which shall be conclusively presumed in the event that
4 the claimant has not reached maximum medical improvement, provided
5 such motion to extend is filed prior to the three year limitation provided
6 for herein. If the claimant cannot establish good cause, the claim shall be
7 dismissed with prejudice by the administrative law judge for lack of
8 prosecution. Such dismissal shall be considered a final disposition at a full
9 hearing on the claim for purposes of employer reimbursement from the
10 fund pursuant to subsection (b) of K.S.A. 44-534a, and amendments
11 thereto.

12 (2) In any claim which has not proceeded to regular hearing within
13 one year from the date of a preliminary award denying compensability of
14 the claim, the employer shall be permitted to file with the division an
15 application for dismissal based on lack of prosecution. The matter shall be
16 set for hearing with notice to the claimant's attorney, if the claimant is
17 represented, or to the claimant's last known address. Unless the claimant
18 can prove a good faith reason for delay, the claim shall be dismissed with
19 prejudice by the administrative law judge. Such dismissal shall be
20 considered a final disposition at a full hearing on the claim for purposes of
21 employer reimbursement from the fund pursuant to subsection (b) of
22 K.S.A. 44-534a, and amendments thereto.

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

25 ~~Sec. 7.~~ K.S.A. 2012 Supp. 44-532a is hereby amended to read as
26 follows: 44-532a. (a) If an employer has no insurance *or has an*
27 *insufficient self-insurance bond or letter of credit* 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 an
31 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 compensation
34 benefits, including medical compensation, to which such injured worker is
35 entitled, to be paid from the workers compensation fund. Whenever a
36 worker files an application under this section, the matter shall be assigned
37 to an administrative law judge for hearing. If the administrative law judge
38 is satisfied as to the existence of the conditions prescribed by this section,
39 the administrative law judge may make an award, or modify an existing
40 award, and prescribe the payments to be made from the workers
41 compensation fund as provided in K.S.A. 44-569, and amendments
42 thereto. The award shall be certified to the commissioner of insurance, and
43 upon receipt thereof, the commissioner of insurance shall cause payment

1 to be made to the worker in accordance therewith.

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

8 ~~Sec. 7.~~ **8.** K.S.A. 44-557 is hereby amended to read as follows: 44-
9 557. (a) It is hereby made the duty of every employer to make or cause to
10 be made a report to the director of any accident, or claimed or alleged
11 accident, to any employee which occurs in the course of the employee's
12 employment and of which the employer or the employer's supervisor has
13 knowledge, which report shall be made upon a form to be prepared by the
14 director, within 28 days, after the receipt of such knowledge, if the
15 personal injuries which are sustained by such accidents, are sufficient
16 wholly or partially to incapacitate the person injured from labor or service
17 for more than the remainder of the day, shift or turn on which such injuries
18 were sustained.

19 (b) When such accident has been reported and subsequently such
20 person has died, a supplemental report shall be filed with the director
21 within 28 days after receipt of knowledge of such death, stating such fact
22 and any other facts in connection with such death or as to the dependents
23 of such deceased employee which the director may require. Such report or
24 reports shall not be used nor considered as evidence before the director,
25 any administrative law judge, the board or in any court in this state.

26 ~~(c) No limitation of time in the workers compensation act shall begin
27 to run unless a report of the accident as provided in this section has been
28 filed at the office of the director if the injured employee has given notice
29 of accident as provided by K.S.A. 44-520 and amendments thereto, except
30 that any proceeding for compensation for any such injury or death, where
31 report of the accident has not been filed, must be commenced by serving
32 upon the employer a written claim pursuant to K.S.A. 44-520a and
33 amendments thereto within one year from the date of the accident,
34 suspension of payment of disability compensation, the date of the last
35 medical treatment authorized by the employer, or the death of such
36 employee referred to in K.S.A. 44-520a and amendments thereto.~~

37 ~~(d)~~ (c) The repeated failure of any employer to file or cause to be
38 filed any report required by this section shall be subject to a civil penalty
39 for each violation of not to exceed \$250.

40 ~~(e)~~ (d) Any civil penalty imposed by this section shall be recovered,
41 by the assistant attorney general upon information received from the
42 director, by issuing and serving upon such employer a summary order or
43 statement of the charges with respect thereto and a hearing shall be

1 conducted thereon in accordance with the provisions of the Kansas
2 administrative procedure act, except that, at the discretion of the director,
3 such civil penalties may be assessed as costs in a workers compensation
4 proceeding by an administrative law judge upon a showing by the assistant
5 attorney general that a required report was not filed which pertains to a
6 claim pending before the administrative law judge.

7 Sec. ~~8~~ 9. K.S.A. 2012 Supp. 44-575 is hereby amended to read as
8 follows: 44-575. (a) As used in K.S.A. 44-575 through 44-580, and
9 amendments thereto, "state agency" means the state, or any department or
10 agency of the state, but not including the Kansas turnpike authority, the
11 university of Kansas hospital authority, any political subdivision of the
12 state or the district court with regard to district court officers or employees
13 whose total salary is payable by counties.

14 (b) For the purposes of providing for the payment of compensation
15 for claims arising on and after July 1, 1974, and all other amounts required
16 to be paid by any state agency as a self-insured employer under the
17 workers compensation act and any amendments or additions thereto, there
18 is hereby established the state workers compensation self-insurance fund
19 in the state treasury. The name of the state workmen's compensation self-
20 insurance fund is hereby changed to the state workers compensation self-
21 insurance fund. Whenever the state workmen's compensation self-
22 insurance fund is referred to or designated by any statute, contract or other
23 document, such reference or designation shall be deemed to apply to the
24 state workers compensation self-insurance fund.

25 (c) The state workers compensation self-insurance fund shall be liable
26 to pay: (1) All compensation for claims arising on and after July 1, 1974,
27 and all other amounts required to be paid by any state agency as a self-
28 insured employer under the workers compensation act and any
29 amendments or additions thereto; (2) the amount that all state agencies are
30 liable to pay of the "carrier's share of expense" of the administration of the
31 office of the director of workers' compensation as provided in K.S.A. 74-
32 712 through 74-719, and amendments thereto, for each fiscal year; (3) all
33 compensation for claims remaining from the self-insurance program which
34 existed prior to July 1, 1974, for institutional employees of the division of
35 mental health and retardation services of the department of social and
36 rehabilitation services; (4) the cost of administering the state workers
37 compensation self-insurance fund including the defense of such fund and
38 any costs assessed to such fund in any proceeding to which it is a party;
39 and (5) the cost of establishing and operating the state workplace health
40 and safety program under subsection (f). For the purposes of K.S.A. 44-
41 575 through 44-580, and amendments thereto, all state agencies are hereby
42 deemed to be a single employer whose liabilities specified in this section
43 are hereby imposed solely upon the state workers compensation self-

1 insurance fund and such employer is hereby declared to be a fully
2 authorized and qualified self-insurer under K.S.A. 44-532, and
3 amendments thereto, but such employer shall not be required to make any
4 reports thereunder.

5 (d) The secretary of ~~administration~~ *health and environment* shall
6 administer the state workers compensation self-insurance fund and all
7 payments from such fund shall be upon warrants of the director of
8 accounts and reports issued pursuant to vouchers approved by the
9 secretary of ~~administration~~ *health and environment* or a person or persons
10 designated by the secretary. The director of accounts and reports may issue
11 warrants pursuant to vouchers approved by the secretary for payments
12 from the state workers compensation self-insurance fund notwithstanding
13 the fact that claims for such payments were not submitted or processed for
14 payment from money appropriated for the fiscal year in which the state
15 workers compensation self-insurance fund first became liable to make
16 such payments.

17 (e) The secretary of ~~administration~~ *health and environment* shall
18 remit all moneys received by or for the secretary in the capacity as
19 administrator of the state workers compensation self-insurance fund, to the
20 state treasurer in accordance with the provisions of K.S.A. 75-4215, and
21 amendments thereto. Upon receipt of each such remittance, the state
22 treasurer shall deposit the entire amount in the state treasury to the credit
23 of the state workers compensation self-insurance fund.

24 (f) There is hereby established the state workplace health and safety
25 program within the state workers compensation self-insurance program of
26 the department of ~~administration~~ *health and environment*. The secretary of
27 ~~administration~~ *health and environment* shall implement and ~~administer~~ *the*
28 *division of industrial health and safety of the Kansas department of labor*
29 *shall assist in administering* the state workplace health and safety program
30 for state agencies. The state workplace health and safety program shall
31 include, but not be limited to:

32 (1) Workplace health and safety hazard surveys in all state agencies,
33 including onsite interviews with employees;

34 (2) workplace health and safety hazard prevention services, including
35 inspection and consultation services;

36 (3) procedures for identifying and controlling workplace hazards;

37 (4) development and dissemination of health and safety informational
38 materials, plans, rules and work procedures; and

39 (5) training for supervisors and employees in healthful and safe work
40 practices.

41 Sec. ~~9~~ **10**. K.S.A. 2012 Supp. 44-577 is hereby amended to read as
42 follows: 44-577. (a) All claims for compensation under the workers
43 compensation act against any state agency for claims arising on and after

1 July 1, 1974, and claims for compensation remaining from the self-
2 insurance program which existed prior to July 1, 1974, for institutional
3 employees of the division of mental health and retardation services of the
4 department of social and rehabilitation services shall be made against the
5 state workers compensation self-insurance fund. Such claims shall be
6 served upon the secretary of ~~administration~~ *health and environment* in the
7 secretary's capacity as administrator of the state workers compensation
8 self-insurance fund in the manner provided for claims against other
9 employers under the workers compensation act. The chief attorney for the
10 department of ~~administration~~ *health and environment*, or another attorney
11 of the department of ~~administration~~ *health and environment* designated by
12 the chief attorney, shall represent and defend the state workers
13 compensation self-insurance fund in all proceedings under the workers
14 compensation act.

15 (b) The secretary of ~~administration~~ *health and environment* shall
16 investigate, or cause to be investigated, each claim for compensation
17 against the state workers compensation self-insurance fund. For the
18 purposes of such investigations, the secretary of ~~administration~~ *health and*
19 *environment* is authorized to obtain expert medical advice regarding the
20 injuries, occupational diseases and disabilities involved in such claims. If,
21 based upon such investigation and any other available information, the
22 secretary of ~~administration~~ *health and environment* finds that there is no
23 material dispute as to any issue involved in the claim, that the claim is
24 valid and that the claim should be settled by agreement, the secretary of
25 ~~administration~~ *health and environment* may proceed to enter into such an
26 agreement with the claimant, for the state workers compensation self-
27 insurance fund. Any such agreement may provide for lump-sum
28 settlements subject to approval by the director and all such agreements
29 shall be filed in the office of the director for approval as provided in
30 K.S.A. 44-527, and amendments thereto. All other claims for
31 compensation against such fund shall be paid in accordance with the
32 workers compensation act pursuant to final awards or orders of an
33 administrative law judge or the board or pursuant to orders and findings of
34 the director under the workers compensation act.

35 (c) For purposes of the workers compensation act, a volunteer
36 member of a regional emergency medical response team as provided in
37 K.S.A. 48-928, and amendments thereto, shall be considered a person in
38 the service of the state in connection with authorized training and upon
39 activation for emergency response, except when such duties arise in the
40 course of employment or as a volunteer for an employer other than the
41 state.

42 Sec. ~~10.~~ **II.** K.S.A. 44-578 is hereby amended to read as follows: 44-
43 578. The secretary of ~~administration~~ *health and environment* may adopt

1 rules and regulations necessary for the administration of the state workers
2 compensation self-insurance fund, including the processing and settling of
3 claims for compensation made against such fund. ~~Such rules and~~
4 ~~regulations shall be subject to the provisions of K.S.A. 75-3706, and~~
5 ~~amendments thereto, and shall be adopted in accordance therewith.~~

6 Sec. ~~11~~. **12.** K.S.A. 44-512, 44-557 and 44-578 and K.S.A. 2012
7 Supp. 2-224a, 44-510d, 44-510e, **44-520**, 44-523, 44-532a, 44-575 and 44-
8 577 are hereby repealed.

9 Sec. ~~12~~. **13.** This act shall take effect and be in force from and after
10 its publication in the statute book.