

SUBSTITUTE FOR HOUSE BILL No. 2134

By Committee on Commerce and Economic Development

2-14

1 AN ACT concerning workers compensation; amending K.S.A. 44-503a,
2 44-510c, 44-510d, 44-510e, 44-510f, 44-515, 44-516, 44-520, 44-525,
3 44-528, 44-531, 44-532a, 44-534a, 44-536 and 44-5a01 and K.S.A.
4 2010 Supp. 44-501, 44-508, 44-510b, 44-510h, 44-510k, 44-511, 44-
5 523 ~~and 44-552~~, **44-552 and 44-555c** and repealing the existing
6 sections; also repealing K.S.A. 44-510a and 44-520a ~~and K.S.A. 2010~~
7 ~~Supp. 44-596~~.
8

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

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

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

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

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

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

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

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

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

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

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

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

27 ~~(2) Affidavits shall conspicuously state on the front thereof in at least
28 10 point, bold-faced print that it is a crime to falsify information on the
29 form.~~

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

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

37 ~~Sec. 4. 3. K.S.A. 2010 Supp. 44-501 is hereby amended to read as
38 follows: 44-501. (a) If in any employment to which the workers
39 compensation act applies, personal injury by accident arising out of and in
40 the course of employment is caused to an employee, the employer shall be
41 liable to pay compensation to the employee in accordance with the
42 provisions of the workers compensation act. In proceedings under the
43 workers compensation act, the burden of proof shall be on the claimant to~~

1 establish the claimant's right to an award of compensation and to prove the
2 various conditions on which the claimant's right depends. In determining
3 whether the claimant has satisfied this burden of proof, the trier of fact
4 shall consider the whole record.

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

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

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

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

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

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

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

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

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

34 ~~(b) No compensation, except for medical benefits provided
35 pursuant to K.S.A. 44-510h, and amendments thereto, shall be allowed
36 for any employee who was unlawfully present in the United States, or who
37 did not have the legal right or authorization under federal law to work in
38 the United States, as defined by 8 U.S.C. § 1324a, except that
39 compensation shall be allowed if the employer hired such employee with
40 the knowledge that such employee was unlawfully present in the United
41 States or did not have the legal right or authorization under federal law to
42 work in the United States. Nothing in this subsection shall be construed to
43 disallow any state or local public benefits that are required to be offered.~~

1 by 8 U.S.C. § 1621.

2 ~~(e)~~ (b) (1) (A) The employer shall not be liable under the workers
3 compensation act where the injury, disability or death was contributed to
4 by the employee's use or consumption of alcohol or any drugs, chemicals
5 or any other compounds or substances, including, but not limited to, any
6 drugs or medications which are available to the public without a
7 prescription from a health care provider, prescription drugs or medications,
8 any form or type of narcotic drugs, marijuana, stimulants, depressants or
9 hallucinogens.

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

17 (C) It shall be conclusively presumed that the employee was impaired
18 due to alcohol or drugs if it is shown that, at the time of the injury, ~~that~~
19 the employee had an alcohol concentration of .04 or more, or a GCMS
20 confirmatory test by quantitative analysis showing a concentration at or
21 above the levels shown on the following chart for the drugs of abuse listed:
22

23 Confirmatory test cutoff levels for urine (ng/ml)

24	Marijuana metabolite ¹	15
25	Cocaine metabolite ²	150
26	Opiates:	
27	Morphine.....	2000
28	Codeine.....	2000
29	6-Acetylmorphine ⁴	10 ng/ml
30	Phencyclidine.....	25
31	Amphetamines:	
32	Amphetamine.....	500
33	Methamphetamine ³	500
34	<u>Confirmatory test cutoff levels for oral (ng/ml)</u>	
35	<u>Amphetamines.....</u>	<u>40</u>
36	<u>Methamphetamines².....</u>	<u>40</u>
37	<u>Phencyclidine.....</u>	<u>0.5</u>
38	<u>Cocaine².....</u>	<u>2</u>
39	<u>Opiates.....</u>	<u>10</u>
40	<u>Marijuana⁴.....</u>	<u>0.5</u>

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

42 ² Benzoylcegonine.

43 ³ Specimen must also contain amphetamine at a concentration greater than or equal to

1 200100 ng/ml.

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

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

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

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

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

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

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

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

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

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

41 (3) Notwithstanding subsection ~~(b) [(c)(2)]~~ (b)(2), the results of a
42 chemical test performed on a sample collected by an employer shall not be
43 admissible evidence to prove impairment unless the following conditions

1 are met:

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

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

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

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

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

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

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

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

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

43 (B) the testing was done in the normal course of medical treatment

1 for reasons related to the health and welfare of the injured worker and was
2 not at the direction of the employer; however, the request for GCMS
3 testing for purposes of confirmation, required by subsection (d)(2)(E) of
4 this section, may have been at the employer's request;

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

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

18 ~~(e)(d)~~ (c) Compensation shall not be paid in case of coronary or
19 coronary artery disease or cerebrovascular injury unless it is shown that
20 the exertion of the work necessary to precipitate the disability was more
21 than the employee's usual work in the course of the employee's regular
22 employment.

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

35 ~~(g)~~ It is the intent of the legislature that the workers compensation act
36 shall be liberally construed for the purpose of bringing employers and
37 employees within the provisions of the act to provide the protections of the
38 workers compensation act to both. The provisions of the workers
39 compensation act shall be applied impartially to both employers and
40 employees in cases arising thereunder.

41 ~~(h)(f)~~ (e) *An award of compensation for permanent partial*
42 *impairment, work disability, or permanent total disability shall be reduced*
43 *by the amount of functional impairment determined to be preexisting. Any*

1 *such reduction shall not apply to temporary total disability, nor shall it*
2 *apply to compensation for medical treatment.*

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

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

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

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

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

41 Sec. 4. *K.S.A. 44-503a is hereby amended to read as follows: 44-*
42 *503a. Whenever an employee is engaged in multiple employment, in*
43 *which such employee performs the same or a very similar type of work on*

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

14 ~~Sec. 6.~~ 5. K.S.A. 2010 Supp. 44-508 is hereby amended to read as
 15 follows: 44-508. As used in the workers compensation act:

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

39 (b) "Workman" or "employee" or "worker" means any person who
 40 has entered into the employment of or works under any contract of service
 41 or apprenticeship with an employer. Such terms shall include but not be
 42 limited to: Executive officers of corporations; professional athletes;
 43 persons serving on a volunteer basis as duly authorized law enforcement

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

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

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

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

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

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

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

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

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

42 (e) *"Repetitive trauma" refers to cases where an injury occurs as a*
43 *result of repetitive use, cumulative traumas or microtraumas. The*
44 *repetitive nature of the injury must be demonstrated by diagnostic or*

1 clinical tests. The repetitive trauma must be the prevailing factor in
2 causing the injury. "Repetitive trauma" shall in no case be construed to
3 include occupational disease, as defined in K.S.A. 44-5a01, and
4 amendments thereto.

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

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

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

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

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

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

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

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

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

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

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

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

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

1 only if:

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

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

6 (iii) the accident is the prevailing factor causing the injury, medical
7 condition, and resulting disability or impairment.

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

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

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

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

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

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

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

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

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

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

11 ~~(g) "Prevailing" as it relates to the term "factor," means the primary~~
12 ~~factor, in relation to any other factor. In determining what constitutes the~~
13 ~~"prevailing factor" in a given case, the administrative law judge shall~~
14 ~~consider all relevant evidence submitted by the parties; the employee was~~
15 ~~under no duty to attend and where the injury did not result from the~~
16 ~~performance of tasks related to the employee's normal job duties or as~~
17 ~~specifically instructed to be performed by the employer.~~

18 **(g) The "prevailing factor" is defined as the primary factor, in**
19 **relation to any other factor. In determining what constitutes the**
20 **"prevailing factor" in a given case, the administrative law judge shall**
21 **consider all relevant evidence submitted by the parties.**

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

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

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

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

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

42 ~~(h)(m) "Community service work" means: (1) Public or community~~
43 ~~service performed as a result of a contract of diversion or of assignment to~~

1 a community corrections program or conservation camp or suspension of
2 sentence or as a condition of probation or in lieu of a fine imposed by
3 court order; or (2) public or community service or other work performed
4 as a requirement for receipt of any kind of public assistance in accordance
5 with any program administered by the secretary of social and rehabilitation
6 services.

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

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

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

25 ~~(p)~~(q) "Group-funded self-insurance plan" includes each group-
26 funded workers compensation pool, which is authorized to operate in this
27 state under K.S.A. 44-581 through 44-592, and amendments thereto, each
28 municipal group-funded pool under the Kansas municipal group-funded
29 pool act which is covering liabilities under the workers compensation act,
30 and any other similar group-funded or pooled plan or arrangement that
31 provides coverage for employer liabilities under the workers compensation
32 act and is authorized by law.

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

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

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

40 (u) *"Functional impairment" means the extent, expressed as a*
41 *percentage, of the loss of a portion of the total physiological capabilities*
42 *of the human body as established by competent medical evidence and*
43 *based on the fourth edition of the American medical association guides to*

1 *the evaluation of impairment, if the impairment is contained therein.*

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

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

11 Sec. ~~7~~ 6. K.S.A. 2010 Supp. 44-510b is hereby amended to read as
12 follows: 44-510b. Where death results from injury, compensation shall be
13 paid as provided in K.S.A. 44-510h and 44-510i, and amendments thereto,
14 and as follows:

15 (a) If an employee leaves any dependents wholly dependent upon the
16 employee's earnings at the time of the ~~accident~~*injury*, all compensation
17 benefits under this section shall be paid to such dependent persons. There
18 shall be an initial payment of \$40,000 to the surviving legal spouse or a
19 wholly dependent child or children or both. The initial payment shall not
20 be subject to the 8% discount as provided in K.S.A. 44-531, and
21 amendments thereto. The initial payment shall be immediately due and
22 payable and apportioned 50% to the surviving legal spouse and 50% to the
23 dependent children. Thereafter, such dependents shall be paid weekly
24 compensation, except as otherwise provided in this section, in a total sum
25 to all such dependents, equal to $66\frac{2}{3}\%$ of the average ~~gross~~ weekly wage
26 of the employee at the time of the ~~accident~~*injury*, computed as provided in
27 K.S.A. 44-511, and amendments thereto, but in no event shall such weekly
28 benefits exceed the maximum weekly benefits provided in K.S.A. 44-
29 510c, and amendments thereto, nor be less than a minimum weekly benefit
30 of the dollar amount nearest to 50% of the state's average weekly wage as
31 determined pursuant to K.S.A. 44-511, and amendments thereto subject to
32 the following:

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

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

40 (3) Any wholly dependent child of the employee shall be paid
41 compensation, except as otherwise provided in this section, until such
42 dependent child becomes 18 years of age. A wholly dependent child of the
43 employee shall be paid compensation, except as otherwise provided in this

1 section, until such dependent child becomes 23 years of age during any
2 period of time that one of the following conditions is met:

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

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

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

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

21 (c) If an employee does not leave any dependents who were wholly
22 dependent upon the employee's earnings at the time of the ~~accident~~*injury*
23 but leaves dependents, other than a spouse or children, in part dependent
24 on the employee's earnings, such percentage of a sum equal to three times
25 the employee's average yearly earnings but not exceeding \$18,500 but not
26 less than \$2,500, as such employee's average annual contributions which
27 the employee made to the support of such dependents during the two years
28 preceding the date of the ~~accident~~*injury*, bears to the employee's average
29 yearly earnings during the contemporaneous two-year period, shall be paid
30 in compensation to such dependents, in weekly payments as provided in
31 subsection (a), not to exceed \$18,500 to all such dependents.

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

40 (e) The administrative law judge, except as otherwise provided in this
41 section, shall have the power and authority to apportion and reapportion
42 the compensation allowed under this section, either to wholly dependent
43 persons or partially dependent persons, in accordance with the degree of

1 dependency as of the date of the ~~accident~~*injury*, except that the weekly
2 payment of compensation to any and all dependents shall not exceed the
3 maximum nor be less than the minimum weekly benefits provided in
4 subsection (a).

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

9 (g) The marriage or death of any dependent shall terminate all
10 compensation, under this section, to such dependent except the marriage of
11 the surviving legal spouse shall not terminate benefits to such spouse.
12 Upon the death of the surviving legal spouse or the marriage or death of a
13 dependent child, the compensation payable to such spouse or child shall be
14 reapportioned to those, among the surviving legal spouse and dependent
15 children, who remain eligible to receive compensation under this section.

16 (h) Notwithstanding any other provision in this section to the
17 contrary, the maximum amount of compensation benefits payable under
18 this section, including the initial payment in subsection (a) to any and all
19 dependents by the employer shall not exceed a total amount of
20 ~~\$250,000~~*\$300,000* and when such total amount has been paid the liability
21 of the employer for any further compensation under this section to
22 dependents, other than minor children of the employee, shall cease except
23 that the payment of compensation under this section to any minor child of
24 the employee shall continue for the period of the child's minority at the
25 weekly rate in effect when the employer's liability is otherwise terminated
26 under this subsection and shall not be subject to termination under this
27 subsection until such child becomes 18 years of age.

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

1 suspended until the annual statement is submitted in proper form to the
2 payer of benefits.

3 Sec. ~~8~~ 7. K.S.A. 44-510c is hereby amended to read as follows: 44-
4 510c. Where death does not result from the injury, compensation shall be
5 paid as provided in K.S.A. 44-510h and 44-510i, and amendments thereto
6 and as follows:

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

17 (2) Permanent total disability exists when the employee, on account
18 of the injury, has been rendered completely and permanently incapable of
19 engaging in any type of substantial and gainful employment. ~~Loss of both~~
20 ~~eyes, both hands, both arms, both feet, or both legs, or any combination~~
21 ~~thereof, in the absence of proof to the contrary, shall constitute a~~
22 ~~permanent total disability. Substantially total paralysis, or incurable~~
23 ~~imbecility or insanity, resulting from injury independent of all other~~
24 ~~causes, shall constitute permanent total disability. In all other cases~~
25 ~~permanent total disability shall be determined in accordance with the facts.~~
26 *Expert evidence shall be required to prove permanent total disability.*

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

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

42 (2) (A) Temporary total disability exists when the employee, on
43 account of the injury, has been rendered completely and temporarily

1 incapable of engaging in any type of substantial and gainful employment.
 2 A release issued by a health care provider with temporary ~~medical~~
 3 ~~limitations/restrictions~~ for an employee may or may not be determinative
 4 of the employee's actual ability to be engaged in any type of substantial
 5 and gainful employment, ~~except provided that temporary total disability~~
 6 ~~compensation shall not be awarded unless the opinion of the authorized~~
 7 ~~treating health care provider is shown to be based on an assessment of the~~
 8 ~~employee's actual job duties with the employer, with or without~~
 9 ~~accommodation. if there is an authorized treating physician, such~~
 10 ~~physicians opinion regarding the employee's work status shall be~~
 11 ~~presumed to be determinative.~~

12 (B) *Where the employee remains employed with the employer against*
 13 *whom benefits are sought, an employee shall be entitled to temporary total*
 14 *disability benefits if the authorized treating physician imposed temporary*
 15 *restrictions as a result of the work injury which the employer cannot*
 16 *accommodate. ~~The employer is permitted to provide work which will meet~~*
 17 *~~the restrictions for the employee at the employer's own company or at any~~*
 18 *~~other for-profit or not-for-profit organization or company.~~ A refusal by the*
 19 *employee of accommodated work within the temporary restrictions*
 20 *imposed by the authorized treating physician shall result in a rebuttable*
 21 *presumption that the employee is ineligible to receive temporary total*
 22 *disability benefits.*

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

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

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

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

43 Sec. ~~9.~~ **8.** K.S.A. 44-510d is hereby amended to read as follows: 44-

1 510d. (a) Where disability, partial in character but permanent in quality,
2 results from the injury, the injured employee shall be entitled to the
3 compensation provided in K.S.A. 44-510h and 44-510i, and amendments
4 thereto,—~~but~~. *The injured employee may be entitled to payment of*
5 *temporary total disability as defined in K.S.A. 44-510c, and amendments*
6 *thereto, or temporary partial disability as defined in subsection (a)(1) of*
7 *K.S.A. 44-510e, and amendments thereto, provided that the injured*
8 *employee shall not be entitled to any other or further compensation for or*
9 *during the first week following the injury unless such disability exists for*
10 *three consecutive weeks, in which event compensation shall be paid for*
11 *the first week. Thereafter compensation shall be paid for temporary total*
12 ~~loss of use and~~ *temporary partial disability as provided in the following*
13 *schedule, 66²/₃% of the average ~~gross~~ weekly wages to be computed as*
14 *provided in K.S.A. 44-511, and amendments thereto, except that in no case*
15 *shall the weekly compensation be more than the maximum as provided for*
16 *in K.S.A. 44-510c, and amendments thereto.*

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

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

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

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

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

26 (5) For the loss of a fourth finger, commonly called the little finger,
27 15 weeks.

28 (6) Loss of the first phalange of the thumb or of any finger shall be
29 considered to be equal to the loss of $\frac{1}{2}$ of such thumb or finger, and the
30 compensation shall be $\frac{1}{2}$ of the amount specified above. The loss of the
31 first phalange and any part of the second phalange of any finger, which
32 includes the loss of any part of the bone of such second phalange, shall be
33 considered to be equal to the loss of $\frac{2}{3}$ of such finger and the
34 compensation shall be $\frac{2}{3}$ of the amount specified above. The loss of the
35 first phalange and any part of the second phalange of a thumb which
36 includes the loss of any part of the bone of such second phalange, shall be
37 considered to be equal to the loss of the entire thumb. The loss of the first
38 and second phalanges and any part of the third proximal phalange of any
39 finger, shall be considered as the loss of the entire finger. Amputation
40 through the joint shall be considered a loss to the next higher schedule.

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

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

43 (9) The loss of the first phalange of any toe shall be considered to be

1 equal to the loss of $\frac{1}{2}$ of such toe and the compensation shall be $\frac{1}{2}$ of the
2 amount above specified.

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

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

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

7 (13) For the loss of an arm, excluding the shoulder joint, shoulder
8 girdle, shoulder musculature or any other shoulder structures, 210 weeks,
9 and for the loss of an arm, including the shoulder joint, shoulder girdle,
10 shoulder musculature or any other shoulder structures, 225 weeks.

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

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

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

14 (17) For the loss of an eye, or the complete loss of the sight thereof,
15 120 weeks.

16 (18) Amputation or severance below the wrist shall be considered as
17 the loss of a hand. Amputation at the wrist and below the elbow shall be
18 considered as the loss of the forearm. Amputation at or above the elbow
19 shall be considered loss of the arm. Amputation below the ankle shall be
20 considered loss of the foot. Amputation at the ankle and below the knee
21 shall be considered as loss of the lower leg. Amputation at or above the
22 knee shall be considered as loss of the leg.

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

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

25 (21) Permanent loss of the use of a finger, thumb, hand, shoulder,
26 arm, forearm, toe, foot, leg or lower leg or the permanent loss of the sight
27 of an eye or the hearing of an ear, shall be equivalent to the loss thereof.
28 For the permanent partial loss of the use of a finger, thumb, hand,
29 shoulder, arm, toe, foot or leg, or the sight of an eye or the hearing of an
30 ear, compensation shall be paid as provided for in K.S.A. 44-510c, and
31 amendments thereto, per week during that proportion of the number of
32 weeks in the foregoing schedule provided for the loss of such finger,
33 thumb, hand, shoulder, arm, toe, foot or leg; or the sight of an eye or the
34 hearing of an ear, which partial loss thereof bears to the total loss of a
35 finger, thumb, hand, shoulder, arm, toe, foot or leg, or the sight of an eye
36 or the hearing of an ear; but in no event shall the compensation payable
37 hereunder for such partial loss exceed the compensation payable under the
38 schedule for the total loss of such finger, thumb, hand, arm, toe, foot or
39 leg, or the sight of an eye or the hearing of an ear, exclusive of the healing
40 period. As used in this paragraph (21), "shoulder" means the shoulder
41 joint, shoulder girdle, shoulder musculature or any other shoulder
42 structures.

43 (22) For traumatic hernia, compensation shall be limited to the

1 compensation under K.S.A. 44-510h and 44-510i, and amendments
 2 thereto, compensation for temporary total disability during such period of
 3 time as such employee is actually unable to work on account of such
 4 hernia, and, in the event such hernia is inoperable, weekly compensation
 5 during 12 weeks, except that, in the event that such hernia is operable, the
 6 unreasonable refusal of the employee to submit to an operation for surgical
 7 repair of such hernia shall deprive such employee of any benefits under the
 8 workers compensation act.

9 (23) Loss of *or loss of use of* a scheduled member shall be based
 10 upon permanent impairment of function to the scheduled member as
 11 determined using the fourth edition of the American medical association
 12 guides to the evaluation of permanent impairment, if the impairment is
 13 contained therein.

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

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

31 (d) *The amount of compensation for permanent partial disability*
 32 *under this section shall be determined ~~as follows~~ by multiplying the*
 33 *payment rate by the weeks payable. As used in this section:*

34 (1) ~~Find the payment rate which~~ **Payment rate** shall be the lesser of
 35 (A) the amount determined by multiplying the average weekly wage of the
 36 worker prior to such injury by 66²/₃% or (B) the maximum provided in
 37 K.S.A. 44-510c, and amendments thereto;

38 (2) ~~find the number of weeks payable by (A) subtracting the weeks of~~
 39 ~~temporary disability compensation paid from the weeks provided on the~~
 40 ~~schedule. To calculate the number of weeks of temporary disability~~
 41 ~~compensation to be deducted pursuant to this subsection (d)(2), divide the~~
 42 ~~sum of all temporary total and temporary partial disability compensation~~
 43 ~~paid by the payment rate determined in this subsection (d)(1), and (B):~~

1 ~~multiply the remainder by the percentage of permanent partial impairment~~
 2 ~~of function as determined under subsection (b)(23); and~~

3 ~~(3) multiply the number of weeks determined in paragraph (2) of this~~
 4 ~~subsection (d) by the payment rate determined in paragraph (1) of this~~
 5 ~~subsection (d); weeks payable shall be determined as follows: (A)~~
 6 ~~Determine the weeks of benefits provided for the injury on schedule; (B)~~
 7 ~~determine the weeks of temporary compensation paid by adding the~~
 8 ~~amounts of temporary total and temporary partial disability~~
 9 ~~compensation paid and dividing the sum by the payment rate above; (C)~~
 10 ~~subtract the weeks of temporary compensation calculated in (d)(2)(B)~~
 11 ~~from the weeks of benefits provided for the injury as determined in (d)(2)~~
 12 ~~(A); (D) Multiply the weeks as determined in (d)(2)(C) by the percentage~~
 13 ~~of permanent partial impairment of function as determined under~~
 14 ~~subsection (b)(23).~~

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

19 ~~Sec. 10. 9. K.S.A. 44-510e is hereby amended to read as follows: 44-~~
 20 ~~510e. (a) If the employer and the employee are unable to agree upon the~~
 21 ~~amount of compensation to be paid in the case of injury not covered by the~~
 22 ~~schedule in K.S.A. 44-510d and amendments thereto, the amount of~~
 23 ~~compensation shall be settled according to the provisions of the workers~~
 24 ~~compensation act as in other cases of disagreement, except that in case of~~
 25 ~~injury resulting in temporary or permanent partial general disability not~~
 26 ~~covered by such the schedule in K.S.A. 44-510d, and amendments thereto,~~
 27 ~~the employee shall receive weekly compensation as determined in this~~
 28 ~~subsection during such the period of temporary or permanent partial~~
 29 ~~general disability not exceeding a maximum of 415 weeks.~~

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

37 ~~(2) (A) Permanent partial general disability exists when the~~
 38 ~~employee is disabled in a manner which is partial in character and~~
 39 ~~permanent in quality and which is not covered by the schedule in K.S.A.~~
 40 ~~44-510d, and amendments thereto. The extent of permanent partial general~~
 41 ~~disability shall be the extent, expressed as a percentage, to which the~~
 42 ~~employee, in the opinion of the physician, has lost the ability to perform~~
 43 ~~the work tasks that the employee performed in any substantial gainful~~

1 ~~employment during the fifteen-year period preceding the accident,~~
2 ~~averaged together with the difference between the average weekly wage~~
3 ~~the worker was earning at the time of the injury and the average weekly~~
4 ~~wage the worker is earning after the injury. In any event, the extent of~~
5 ~~permanent partial general disability shall not be less than the percentage of~~
6 ~~functional impairment. Functional impairment means the extent, expressed~~
7 ~~as a percentage, of the loss of a portion of the total physiological~~
8 ~~capabilities of the human body as established by competent medical~~
9 ~~evidence and based on the fourth edition of the American Medical~~
10 ~~Association Guides to the Evaluation of Permanent Impairment, if the~~
11 ~~impairment is contained therein. An employee shall not be entitled to~~
12 ~~receive permanent partial general disability compensation in excess of the~~
13 ~~percentage of functional impairment as long as the employee is engaging~~
14 ~~in any work for wages equal to 90% or more of the average gross weekly~~
15 ~~wage that the employee was earning at the time of the injury. If the~~
16 ~~employer and the employee are unable to agree upon the employee's~~
17 ~~functional impairment and if at least two medical opinions based on~~
18 ~~competent medical evidence disagree as to the percentage of functional~~
19 ~~impairment, such matter may be referred by the administrative law judge~~
20 ~~to an independent health care provider who shall be selected by the~~
21 ~~administrative law judge from a list of health care providers maintained by~~
22 ~~the director. The health care provider selected by the director pursuant to~~
23 ~~this section shall issue an opinion regarding the employee's functional~~
24 ~~impairment which shall be considered by the administrative law judge in~~
25 ~~making the final determination. Compensation for permanent partial~~
26 ~~general disability shall also be paid as provided in this section where an~~
27 ~~injury results in:~~

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

31 *(ii) the loss of or loss of use of a leg, lower leg or foot of one lower*
32 *extremity, combined with the loss of or loss of use of a leg, lower leg or*
33 *foot of the other lower extremity; or*

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

35 *(B) The extent of permanent partial general disability shall be the*
36 *percentage of functional impairment the employee sustained on account of*
37 *the injury as established by competent medical evidence and based on the*
38 *fourth edition of the American medical association guides to the*
39 *evaluation of permanent impairment, if the impairment is contained*
40 *therein.*

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

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

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

9 *In such cases, the extent of work disability is determined by averaging*
10 *together the percentage of post-injury task loss demonstrated by the*
11 *employee to be caused by the injury and the percentage of post-injury*
12 *wage loss demonstrated by the employee to be caused by the injury.*

13 (D) *“Task loss” ~~means~~ shall mean the percentage to which the*
14 *employee, in the opinion of a licensed physician, has lost the ability to*
15 *perform the work tasks that the employee performed in any substantial*
16 *gainful employment during the five-year period preceding the injury. The*
17 *permanent restrictions imposed by a licensed physician as a result of the*
18 *work injury shall be used to determine those work tasks which the*
19 *employee has lost the ability to perform. If the employee has preexisting*
20 *permanent restrictions, any work tasks which the employee would have*
21 *been deemed to have lost the ability to perform, had a task loss analysis*
22 *been completed prior to the injury at issue, shall be excluded for the*
23 *purposes of calculating the task loss which is directly attributable to the*
24 *current injury.*

25 (E) *“Wage loss” ~~means~~ shall mean the difference between the*
26 *average weekly wage the employee was earning at the time of the injury*
27 *and the average weekly wage the employee is capable of earning after the*
28 *injury. The capability of a worker to earn post-injury wages shall be*
29 *established based upon a consideration of all factors, including, but not*
30 *limited to, the injured worker’s age, physical capabilities, education and*
31 *training, prior experience, and availability of jobs in the open labor*
32 *market. The administrative law judge shall impute an appropriate post-*
33 *injury average weekly wage based on such factors. Where the employee is*
34 *engaged in post-injury employment for wages, there shall be a rebuttable*
35 *presumption that the average weekly wage an injured worker is actually*
36 *earning constitutes the post-injury average weekly wage that the employee*
37 *is capable of earning. The presumption may be overcome by competent*
38 *evidence.*

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

43 (ii) *The actual or projected weekly value of any employer-paid fringe*

1 benefits are to be included as part of the worker's post-injury average
 2 weekly wage and shall be added to the wage imputed by the administrative
 3 law judge pursuant to subsection (a)(2)(E) of K.S.A. 44-510e **K.S.A. 44-**
 4 **510e(a)(2)(E)**, and amendments thereto.

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

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

12 (1)(i) ~~Find the payment rate which shall be the lesser of (A) the~~
 13 ~~amount determined by multiplying the average gross weekly wage of the~~
 14 ~~worker prior to such injury by 66²/₃% or (B) the maximum provided in~~
 15 ~~K.S.A. 44-510e, and amendments thereto;~~

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

27 (3)(iii) ~~multiply the number of disability weeks determined in~~
 28 ~~paragraph (2) of this subsection (a)subsection (a)(2)(F) by the payment~~
 29 ~~rate determined in paragraph (1) of this subsection (a)subsection (a)(2)(F)~~
 30 ~~(f);~~

31 ~~[To calculate the number of weeks of temporary disability~~
 32 ~~compensation to be deducted pursuant to subparagraph (F)(ii), divide~~
 33 ~~the sum of all temporary total and temporary partial disability~~
 34 ~~compensation paid by the payment rate determined in subsection (a)~~
 35 ~~(2)(E)(i).] The amount of compensation for permanent partial general~~
 36 ~~disability in excess of the percentage of functional impairment under~~
 37 ~~this section shall be determined by multiplying the payment rate by the~~
 38 ~~weeks payable. As used in this section: (1) The payment rate shall be the~~
 39 ~~lesser of: (A) The amount determined by multiplying the average weekly~~
 40 ~~wage of the worker prior to such injury by 66 2/3%; or (B) the maximum~~
 41 ~~provided in K.S.A. 44-510c, and amendments thereto; (2) weeks payable~~
 42 ~~shall be determined as follows: (A) Determine the weeks of temporary~~
 43 ~~compensation paid by adding the amounts of temporary total and~~

1 *temporary partial disability compensation paid and dividing the sum by*
2 *the payment rate above; (B) subtract from 415 weeks the total number of*
3 *weeks of temporary compensation paid as determined in (F)(2)(A),*
4 *excluding the first 15 such weeks; (3) multiply the number of weeks as*
5 *determined in (F)(2)(B) by the percentage of permanent partial general*
6 *disability as determined under subsection (a)(2)(C).*

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

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

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

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

40 (e) In any case of injury to or death of an employee, where the
41 employee or the employee's dependents are entitled to compensation under
42 the workers compensation act, such compensation shall be exclusive of all
43 other remedies or causes of action for such injury or death, and no claim or

1 action shall inure, accrue to or exist in favor of the surviving spouse or any
2 relative or next of kin of such employee against such employer on account
3 of any damage resulting to such surviving spouse or any relative or next of
4 kin on account of the loss of earnings, services, or society of such
5 employee or on any other account resulting from or growing out of the
6 injury or death of such employee.

7 Sec. ~~11~~ **10**. K.S.A. 44-510f is hereby amended to read as follows: 44-
8 510f. (a) Notwithstanding any provision of the workers compensation act
9 to the contrary, the maximum compensation benefits payable by an
10 employer shall not exceed the following:

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

15 (2) for temporary total disability, including any prior permanent total,
16 permanent partial or temporary partial disability payments paid or due,
17 ~~\$100,000~~ *\$130,000* for an injury ~~or any aggravation thereof~~;

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

22 (4) for permanent partial disability, where functional impairment only
23 is awarded, ~~\$50,000~~ *\$75,000* for an injury ~~or aggravation thereof~~. *The*
24 *\$75,000 cap contained in this subsection shall apply whether or not*
25 *temporary total disability or temporary partial disability benefits were*
26 *paid.*

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

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

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

43 Sec. ~~12~~ **11**. K.S.A. 2010 Supp. 44-510h is hereby amended to read as

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

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

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

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

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

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

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

43 (4) the injured employee shall be entitled only to benefits that would

1 reasonably have been expected had such employee undergone medical or
2 surgical treatment; and

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

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

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

33 ~~Sec. 13. 12.~~ K.S.A. 2010 Supp. 44-510k is hereby amended to read as
34 follows: 44-510k. (a) (1) At any time after the entry of an award for
35 compensation *wherein future medical benefits were awarded*, the
36 employee, ~~employer, dependent, insurance carrier or any other interested~~
37 ~~party or insurance carrier~~ may make application for a hearing, in such
38 form as the director may require for the furnishing *termination or*
39 *modification* of medical treatment. Such post-award hearing shall be held
40 by the assigned administrative law judge, in any county designated by the
41 administrative law judge, and the judge shall conduct the hearing as
42 provided in K.S.A. 44-523, and amendments thereto.

43 (2) The administrative law judge can (A) make an award for further

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

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

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

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

41 (c) *The administrative law judge may award attorney fees and costs*
42 *on the claimant's behalf consistent with subsection (g) of K.S.A. 44-536,*
43 *and amendments thereto. As used in this subsection, "costs" include, but*

1 are not limited to, witness fees, mileage allowances, any costs associated
2 with reproduction of documents that become a part of the hearing record,
3 the expense of making a record of the hearing and such other charges as
4 are by statute authorized to be taxed as costs.

5 Sec. ~~14~~ 13. K.S.A. 2010 Supp. 44-511 is hereby amended to read as
6 follows: 44-511. (a) As used in this section:

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

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

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

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

43 (3) The term "wage" shall be construed to mean the total of the

1 money and any additional compensation which the employee receives for
2 services rendered for the employer in whose employment the employee
3 sustains an injury by accident arising out of and in the course of such
4 employment.

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

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

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

29 ~~(1) If at the time of the accident the money rate is fixed by the year,~~
30 ~~the average gross weekly wage shall be the yearly rate so fixed divided by~~
31 ~~52, plus the average weekly value of any additional compensation and the~~
32 ~~value of the employee's average weekly overtime as computed in~~
33 ~~paragraph (4) of this subsection.~~

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

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

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

27 ~~(5) If at the time of the accident the money rate is fixed by the output~~
28 ~~of the employee, on a commission or percentage basis, on a flat-rate basis~~
29 ~~for performance of a specified job, or on any other basis where the money~~
30 ~~rate is not fixed by the week, month, year or hour, and if the employee has~~
31 ~~been employed by the employer at least one calendar week immediately~~
32 ~~preceding the date of the accident, the average gross weekly wage shall be~~
33 ~~the gross amount of money earned during the number of calendar weeks so~~
34 ~~employed, up to a maximum of 26 calendar weeks immediately preceding~~
35 ~~the date of the accident, divided by the number of weeks employed, or by~~
36 ~~26 as the case may be, plus the average weekly value of any additional~~
37 ~~compensation and the value of the employee's average weekly overtime~~
38 ~~computed as provided in paragraph (4) of this subsection.~~

39 ~~(2) If the employee had been in the employment of *actually employed*~~
40 ~~by the employer *for* less than one calendar week immediately preceding~~
41 ~~the accident *or injury*, the average gross weekly wage shall be determined~~
42 ~~by the administrative law judge based upon all of the evidence and~~
43 ~~circumstances, including the usual wage for similar services paid by the~~

1 same employer, or if the employer has no employees performing similar
2 services, the usual wage paid for similar services by other employers. The
3 average gross weekly wage so determined shall not exceed the actual
4 average gross weekly wage the employee was reasonably expected to earn
5 in the employee's specific employment, including the average weekly
6 value of any additional compensation ~~and the value of the employee's~~
7 ~~average weekly overtime computed as provided in paragraph (4) of this~~
8 ~~subsection. In making any computations under this paragraph (5),~~
9 ~~workweeks during which the employee was on vacation, leave of absence,~~
10 ~~sick leave or was absent the entire workweek because of illness or injury~~
11 ~~shall not be considered.~~

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

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

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

40 (D) ~~The average weekly wage of any other volunteer under the~~
41 ~~workers compensation act, who receives no wages for such services, or~~
42 ~~who receives wages which are substantially less than the usual wages paid~~
43 ~~for such services by comparable employers to employees who are not~~

1 volunteers, shall be computed on the basis of the usual wages paid by the
2 employer for such services to employees who are not volunteers, or, if the
3 employer has no employees performing such services for wages who are
4 not volunteers, the average gross weekly wage shall be computed on the
5 basis of the usual wages paid for such services by comparable employers
6 to employees who are not volunteers. Volunteer employment is not
7 presumed to be full-time employment.

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

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

26 (5) (A) *The average weekly wage of a person serving on a*
27 *volunteer basis as a duly authorized law enforcement officer, ambulance*
28 *attendants and drivers as provided in subsection (b) of K.S.A. 44-508, and*
29 *amendments thereto, firefighter or members of regional emergency*
30 *medical response teams as provided in K.S.A. 48-928, and amendments*
31 *thereto, who receives no wages for such services, or who receives wages*
32 *which are substantially less than the usual wages paid for such services by*
33 *comparable employers to employees who are not volunteers, shall be*
34 *computed on the basis of the dollar amount closest to, but not exceeding,*
35 *112½% of the state average weekly wage.*

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

38 (C) *The average weekly wage of a volunteer member of the Kansas*
39 *department of civil air patrol officially engaged in the performance of*
40 *functions specified in K.S.A. 48-3302, and amendments thereto, shall be*
41 *deemed to be \$476.38. Whenever the rates of compensation of the pay*
42 *plan for persons in the classified service under the Kansas civil service act*
43 *are increased for payroll periods chargeable to fiscal years commencing*

1 *after June 30, 1988, the average weekly wage which is deemed to be the*
2 *average weekly wage under the provisions of this subsection for a*
3 *volunteer member of the Kansas department of civil air patrol shall be*
4 *increased by an amount, adjusted to the nearest dollar; computed by*
5 *multiplying the average of the percentage increases in all monthly steps of*
6 *such pay plan by the average weekly wage deemed to be the average*
7 *weekly wage of such volunteer member under the provisions of this*
8 *subsection prior to the effective date of such increase in the rates of*
9 *compensation of the pay plan for persons in the classified service under*
10 *the Kansas civil service act.*

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

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

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

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

43 ~~Sec. 15.~~ **14.** K.S.A. 44-515 is hereby amended to read as follows: 44-

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

40 (b) If the employee requests, such employee shall be entitled to have
41 health care providers of such employee's own selection present at the time
42 to participate in such examination ~~at the employee's own expense.~~

43 (c) Unless a report is furnished as provided in subsection (a) and

1 unless there is a reasonable opportunity thereafter for the health care
2 providers selected by the employee to participate in the examination in the
3 presence of the health care providers selected by the employer, the health
4 care providers selected by the employer or employee shall not be permitted
5 afterwards to give evidence of the condition of the employee at the time
6 such examination was made.

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

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

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

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

35 ~~Sec. 17.~~ **16.** K.S.A. 44-520 is hereby amended to read as follows: 44-
36 520. ~~Except as otherwise provided in this section,~~ (a) Proceedings for
37 compensation under the workers compensation act shall not be
38 maintainable unless notice of the accident, stating the time and place and
39 particulars thereof, and the name and address of the person injured, is
40 given to the employer within 10 days after the date of the accident, except
41 that actual knowledge of the accident by the employer or the employer's
42 duly authorized agent shall render the giving of such notice unnecessary.
43 ~~The ten-day notice provided in this section shall not bar any proceeding~~

1 for compensation under the workers compensation act if the claimant
2 shows that a failure to notify under this section was due to just cause,
3 except that in no event shall such a proceeding for compensation be
4 maintained unless the notice required by this section is given to the
5 employer within 75 days after the date of the accident unless (a) actual
6 knowledge of the accident by the employer or the employer's duly
7 authorized agent renders the giving of such notice unnecessary as provided
8 in this section, (b) the employer was unavailable to receive such notice as
9 provided in this section, or (c) the employee was physically unable to give
10 such notice *injury by accident or repetitive trauma is given to the*
11 *employer; Within 30 calendar days of the date of accident or the date of:*
12 *injury by repetitive trauma; within 10 calendar days after the employee's:*
13 *last day of employment; or within 10 calendar days after the employee:*
14 *seeks medical treatment specifically for the injury, as defined in subsection*
15 *(c) of K.S.A. 44-510h, and amendments thereto. Notice shall be provided:*
16 *within a time period never to exceed 30 calendar days of the date of:*
17 *accident or the date of injury by repetitive trauma within 30 calendar*
18 *days of the date of accident or the date of injury by repetitive trauma.*
19 *Notice may be given orally or in writing.*

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

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

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

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

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

43 Sec. ~~18.~~ 17. K.S.A. 2010 Supp. 44-523 is hereby amended to read as

1 follows: 44-523. (a) The director, administrative law judge or board shall
2 not be bound by technical rules of procedure, but shall give the parties
3 reasonable opportunity to be heard and to present evidence, insure the
4 employee and the employer an expeditious hearing and act reasonably
5 without partiality.

6 (b) Whenever a party files an application for hearing pursuant to
7 K.S.A. 44-534, and amendments thereto, the matter shall be assigned to an
8 administrative law judge for hearing and the administrative law judge shall
9 set a terminal date to require the claimant to submit all evidence in support
10 of the claimant's claim no later than 30 days after the first full hearing
11 before the administrative law judge and to require the respondent to submit
12 all evidence in support of the respondent's position no later than 30 days
13 thereafter. An extension of the foregoing time limits shall be granted if all
14 parties agree. An extension of the foregoing time limits may also be
15 granted:

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

18 (2) for medical examination of the claimant if the party requesting the
19 extension explains in writing to the administrative law judge facts showing
20 that the party made a diligent effort but was unable to have a medical
21 examination conducted prior to the submission of the case by the claimant
22 but then only if the examination appointment was set and notice of the
23 appointment sent prior to submission by the claimant; or

24 (3) on application for good cause shown.

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

37 (d) Not less than 10 days prior to the first full hearing before an
38 administrative law judge, the administrative law judge shall conduct a
39 prehearing settlement conference for the purpose of obtaining stipulations
40 from the parties, determining the issues and exploring the possibility that
41 the parties may resolve those issues and reach a settlement prior to the first
42 full hearing.

43 (e) (1) If a party or a party's attorney believes that the administrative

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

18 (2) If a party or a party's attorney files an affidavit alleging any of the
19 grounds specified in subsection (e)(3), the chief judge shall at once
20 determine, or refer the affidavit to another district court judge for prompt
21 determination of, the legal sufficiency of the affidavit. If the affidavit is
22 filed in a district court in which there is no other judge who is qualified to
23 hear the matter, the chief judge shall at once notify the departmental justice
24 for the district and request the appointment of another district judge to
25 determining the legal sufficiency of the affidavit. If the affidavit is found
26 to be legally sufficient, the district court judge shall order the director to
27 assign the case to another administrative law judge or to an assistant
28 director.

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

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

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

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

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

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

41 (4) In any affidavit filed pursuant to subsection (e)(2), the recital of
42 previous rulings or decisions by the administrative law judge on legal
43 issues or concerning prior motions for change of administrative law judge

1 filed by counsel or such counsel's law firm, pursuant to this subsection,
2 shall not be deemed legally sufficient for any believe that bias or prejudice
3 exists.

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

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

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

35 ~~Sec. 19.~~ **18.** K.S.A. 44-525 is hereby amended to read as follows: 44-
36 525. (a) Every finding or award of compensation shall be in writing signed
37 and acknowledged by the administrative law judge and shall specify the
38 amount due and unpaid by the employer to the employee up to the date of
39 the award, if any, and the amount of the payments thereafter to be paid by
40 the employer to the employee, if any, and the length of time such payment
41 shall continue. *No award shall include the right to future medical*
42 *treatment, unless it is proved by the claimant that it is more probable than*
43 *not that future medical treatment, as defined in subsection (e) of K.S.A. 44-*

1 *510h, and amendments thereto, will be required as a result of the work-*
2 *related injury.* The award of the administrative law judge shall be effective
3 the day following the date noted in the award.

4 (b) No award shall be or provide for payment of compensation in a
5 lump sum, except as to such portion of the compensation as shall be found
6 to be due and unpaid at the time of the award, or except at the discretion of
7 the director on settlement agreements, and credit shall be given to the
8 employer in such award for any amount or amounts paid by the employer
9 to the employee as compensation prior to the date of the award.

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

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

38 (b) ~~If the administrative law judge finds that the employee has~~
39 ~~returned to work for the same employer in whose employ the employee~~
40 ~~was injured or for another employer and is earning or is capable of earning~~
41 ~~the same or higher wages than the employee did at the time of the~~
42 ~~accident, or is capable of gaining an income from any trade or employment~~
43 ~~which is equal to or greater than the wages the employee was earning at~~

1 ~~the time of the accident, or finds that the employee has absented and~~
2 ~~continues to be absent so that a reasonable examination cannot be made of~~
3 ~~the employee by a health care provider selected by the employer, or has~~
4 ~~departed beyond the boundaries of the United States, the administrative~~
5 ~~law judge may modify the award and reduce compensation or may cancel~~
6 ~~the award and end the compensation.~~

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

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

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

37 (b) No lump-sum awards, unless agreed to by the parties, shall be
38 rendered under the workers compensation act except: (1) As provided in
39 subsection (a) of this section, (2) as provided in subsection (a) K.S.A. 44-
40 510b, and amendments thereto, (3) in cases involving compensation due
41 the employee at the time the award is rendered as provided in K.S.A. 44-
42 525, and amendments thereto and in cases of past due compensation as
43 provided in K.S.A. 44-529, and amendments thereto.

1 (c) *The parties, by agreement and with approval of an administrative*
2 *law judge, may enter into a compromise lump-sum settlement in either*
3 *permanent total or permanent partial disability cases which prorates the*
4 *lump-sum settlement over the life expectancy of the injured worker. When*
5 *such an agreement has been approved, neither the weekly compensation*
6 *rate paid throughout the case nor the maximum statutory weekly rate*
7 *applicable to the injury shall apply. No compensation rate shall exceed the*
8 *maximum statutory weekly rate as of the date of the injury. Instead, the*
9 *prorated rate set forth in the approved settlement documents shall control*
10 *and become the rate for that case. This section shall be retroactive in*
11 *effect.*

12 Sec. ~~22~~ 21. K.S.A. 44-532a is hereby amended to read as follows:
13 44-532a. (a) If an employer has no insurance to secure the payment of
14 compensation *or has insufficiently funded a self-insurance bond*, as
15 provided in subsection (b) (1) *and (2)* of K.S.A. 44-532, and amendments
16 thereto, and such employer is financially unable to pay compensation to an
17 injured worker as required by the workers compensation act, or such
18 employer cannot be located and required to pay such compensation, the
19 injured worker may apply to the director for an award of the compensation
20 benefits, including medical compensation, to which such injured worker is
21 entitled, to be paid from the workers compensation fund. Whenever a
22 worker files an application under this section, the matter shall be assigned
23 to an administrative law judge for hearing. If the administrative law judge
24 is satisfied as to the existence of the conditions prescribed by this section,
25 the administrative law judge may make an award, or modify an existing
26 award, and prescribe the payments to be made from the workers
27 compensation fund as provided in K.S.A. 44-569, and amendments
28 thereto. The award shall be certified to the commissioner of insurance, and
29 upon receipt thereof, the commissioner of insurance shall cause payment
30 to be made to the worker in accordance therewith.

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

37 Sec. ~~23~~ 22. K.S.A. 44-534a is hereby amended to read as follows:
38 44-534a. (a) (1) After an application for a hearing has been filed pursuant
39 to K.S.A. 44-534, and amendments thereto, the employee or the employer
40 may make application for a preliminary hearing, in such form as the
41 director may require, on the issues of the furnishing of medical treatment
42 and the payment of temporary total *or temporary partial* disability
43 compensation. At least seven days prior to filing an application for a

1 preliminary hearing, the applicant shall give written notice to the adverse
2 party of the intent to file such an application. Such notice of intent shall
3 contain a specific statement of the benefit change being sought that is to be
4 the subject of the requested preliminary hearing. If the parties do not agree
5 to the change of benefits within the seven-day period, the party seeking a
6 change in benefits may file an application for preliminary hearing which
7 shall be accompanied by a copy of the notice of intent and the applicant's
8 certification that the notice of intent was served on the adverse party or
9 that party's attorney and that the request for a benefit change has either
10 been denied or was not answered within seven days after service. Copies
11 of medical reports or other evidence which the party intends to produce as
12 exhibits supporting the change of benefits shall be included with the
13 application. The director shall assign the application to an administrative
14 law judge who shall set the matter for a preliminary hearing and shall give
15 at least seven days' written notice by mail to the parties of the date set for
16 such hearing.

17 (2) Such preliminary hearing shall be summary in nature and shall be
18 held by an administrative law judge in any county designated by the
19 administrative law judge, and the administrative law judge shall exercise
20 such powers as are provided for the conduct of full hearings on claims
21 under the workers compensation act. Upon a preliminary finding that the
22 injury to the employee is compensable and in accordance with the facts
23 presented at such preliminary hearing, the administrative law judge may
24 make a preliminary award of medical compensation and temporary total
25 disability compensation to be in effect pending the conclusion of a full
26 hearing on the claim, except that if the employee's entitlement to medical
27 compensation or temporary total disability compensation is disputed or
28 there is a dispute as to the compensability of the claim, no preliminary
29 award of benefits shall be entered without giving the employer the
30 opportunity to present evidence, including testimony, on the disputed
31 issues. A finding with regard to a disputed issue of whether the employee
32 suffered an ~~accidental~~ *accident, repetitive trauma or resulting injury*,
33 whether the injury arose out of and in the course of the employee's
34 employment, whether notice is given ~~or claim timely made~~, or whether
35 certain defenses apply, shall be considered jurisdictional, and subject to
36 review by the board. Such review by the board shall not be subject to
37 judicial review. If an appeal from a preliminary order is perfected under
38 this section, such appeal shall not stay the payment of medical
39 compensation and temporary total disability compensation from the date of
40 the preliminary award. If temporary total compensation is awarded, such
41 compensation may be ordered paid from the date of filing the application,
42 except that if the administrative law judge finds from the evidence
43 presented that there were one or more periods of temporary total disability

1 prior to such filing date, temporary total compensation may be ordered
2 paid for all periods of temporary total disability prior to such date of filing.
3 The decision in such preliminary hearing shall be rendered within five
4 days of the conclusion of such hearing. Except as provided in this section,
5 no such preliminary findings or preliminary awards shall be appealable by
6 any party to the proceedings, and the same shall not be binding in a full
7 hearing on the claim, but shall be subject to a full presentation of the facts.

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

29 Sec. 24. 23. K.S.A. 44-536 is hereby amended to read as follows: 44-
30 536. (a) With respect to any and all proceedings in connection with any
31 initial or original claim for compensation, no claim of any attorney for
32 services rendered in connection with the securing of compensation for an
33 employee or the employee's dependents, whether secured by agreement,
34 order, award or a judgment in any court shall exceed a reasonable amount
35 for such services or 25% of the amount of compensation recovered and
36 paid, whichever is less, in addition to actual expenses incurred, and subject
37 to the other provisions of this section. Except as hereinafter provided in
38 this section, in death cases, total disability and partial disability cases, the
39 amount of attorney fees shall not exceed 25% of the sum which would be
40 due under the workers compensation act beyond 415 weeks of permanent
41 total disability based upon the employee's average ~~gross~~ weekly wage
42 prior to the date of the ~~accident or~~ injury and subject to the maximum
43 weekly benefits provided in K.S.A. 44-510c, and amendments thereto.

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

21 (1) The written offers of settlement received by the employee prior to
22 execution of a written contract between the employee and the attorney; the
23 employer shall attach to the settlement worksheet copies of any written
24 offers of settlement which were sent to the employee before the employer
25 was aware that the employee had hired an attorney;

26 (2) the time and labor required, the novelty and difficulty of the
27 questions involved and the skill requisite to perform the legal services
28 properly;

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

32 (4) the fee customarily charged in the locality for similar legal
33 services;

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

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

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

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

41 (c) No attorney fees shall be charged with respect to compensation
42 for medical expenses, except where an allowance is made for proposed or
43 future treatment as a part of a compromise settlement. No attorney fees

1 shall be charged with respect to vocational rehabilitation benefits.

2 (d) No attorney fees shall be charged in connection with any
3 temporary total disability compensation unless the payment of such
4 compensation in the proper amount is refused, or unless such
5 compensation is terminated by the employer and the payment of such
6 compensation is obtained or reinstated by the efforts of the attorney,
7 whether by agreement, settlement, award or judgment.

8 (e) With regard to any claim where there is no dispute as to any of the
9 material issues prior to representation of the claimant or claimants by an
10 attorney, or where the amount to be paid for compensation does not exceed
11 the written offer made to the claimant or claimants by the employer prior
12 to execution of a written contract between the employee and an attorney,
13 the fees to any such attorney shall not exceed either the sum of \$250 or a
14 reasonable fee for the time actually spent by the attorney, as determined by
15 the director, whichever is greater, exclusive of reasonable attorney fees for
16 any representation by such attorney in reference to any necessary probate
17 proceedings. With regard to any claim where the amount to be paid for
18 compensation does exceed the written offer made prior to representation,
19 fees for services rendered by an attorney shall not exceed the lesser of (1)
20 a reasonable amount for such services; (2) an amount equal to the total of
21 50% of that portion of the amount of compensation recovered and paid,
22 which is in excess of the amount of compensation offered to the employee
23 by the employer prior to the execution of a written contract between the
24 employee and the attorney; or (3) 25% of the total amount of
25 compensation recovered and paid as described in subsection (a).

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

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

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

43 (2) If such services involve no additional award of disability

1 compensation, but result in an additional award of medical compensation,
2 penalties, or other benefits, the director shall fix the proper amount of such
3 attorney fees in accordance with this subsection and such fees shall be paid
4 by the employer or the workers compensation fund, if the fund is liable for
5 compensation pursuant to K.S.A. 44-567, and amendments thereto, to the
6 extent of the liability of the fund.

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

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

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

23 ~~Sec. 25. 24.~~ K.S.A. 2010 Supp. 44-552 is hereby amended to read as
24 follows: 44-552. (a) The director with the approval of the secretary of
25 labor shall at each hearing under the workers compensation act appoint a
26 certified shorthand reporter, who may be within the classified service of
27 the Kansas civil service act, to attend each hearing where testimony is
28 introduced, and preserve a complete record of all oral or documentary
29 evidence introduced and all proceedings had at such hearing unless such
30 appointment is waived by mutual agreement. At the conclusion of the
31 hearing in any case, if neither party has requested opportunity to file
32 briefs, the administrative law judge may read into the record for
33 certification and filing in the office of the director such stipulations,
34 findings, rulings or orders the administrative law judge deems expedient to
35 the early disposition of the case. If the administrative law judge uses such
36 procedure, with the consent of the parties, no transcript of the record of the
37 hearing shall be made, except that part which is read into the record by the
38 administrative law judge.

39 (b) All testimony introduced and proceedings had in hearings shall be
40 taken down by the certified shorthand reporter, and if an action for review
41 is commenced or if the director, or either party or the best interests of the
42 administration of justice, so instructs, the certified shorthand reporter shall
43 transcribe the certified shorthand reporter's notes of such hearing. If an

1 action for review is commenced, the cost of preparing a transcript shall be
2 paid as provided by K.S.A. 77-620, and amendments thereto. If no action
3 for review is commenced, the cost of preparing a transcript shall be taxed
4 as costs in the case at the discretion of the director in accordance with fair
5 and customary rates charged in the state of Kansas. All official notes of
6 such certified shorthand reporters shall be preserved and filed in the office
7 of the director. Any transcript prepared as above provided and duly
8 certified shall be received as evidence by the board and by any court with
9 the same effect as if the certified shorthand reporter were present and
10 testified to the records so certified.

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

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

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

22 Sec. ~~26.~~ 25. K.S.A. 44-5a01 is hereby amended to read as follows:
23 44-5a01. (a) Where the employer and employee or workman are subject by
24 law or election to the provisions of the workmen's compensation act, the
25 disablement or death of an employee or workman resulting from an
26 occupational disease as defined in this section shall be treated as the
27 happening of an injury by accident, and the employee or workman or, in
28 case of death, his dependents shall be entitled to compensation for such
29 disablement or death resulting from an occupational disease, in accordance
30 with the provisions of the workmen's compensation act as in cases of
31 injuries by accident which are compensable thereunder, except as
32 specifically provided otherwise for occupational diseases. *In no*
33 *circumstances shall an occupational disease be construed to include*
34 *injuries caused by repetitive trauma as defined in K.S.A. 44-508, and*
35 *amendments thereto.*

36 (b) "Occupational disease" shall mean only a disease arising out of
37 and in the course of the employment resulting from the nature of the
38 employment in which the employee was engaged under such employer,
39 and which was actually contracted while so engaged. "Nature of the
40 employment" shall mean, for purposes of this section, that to the
41 occupation, trade or employment in which the employee was engaged,
42 there is attached a particular and peculiar hazard of such disease which
43 distinguishes the employment from other occupations and employments,

1 and which creates a hazard of such disease which is in excess of the hazard
2 of such disease in general. The disease must appear to have had its origin
3 in a special risk of such disease connected with the particular type of
4 employment and to have resulted from that source as a reasonable
5 consequence of the risk. Ordinary diseases of life and conditions to which
6 the general public is or may be exposed to outside of the particular
7 employment, and hazards of diseases and conditions attending
8 employment in general, shall not be compensable as occupational diseases:
9 *Provided, except* that compensation shall not be payable for pulmonary
10 emphysema or other types of emphysema unless it is proved, by clear and
11 convincing medical evidence to a reasonable probability, that such
12 emphysema was caused, solely and independently of all other causes, by
13 the employment with the employer against whom the claim is made,
14 except that, if it is proved to a reasonable medical probability that an
15 existing emphysema was aggravated and contributed to by the
16 employment with the employer against whom the claim is made,
17 compensation shall be payable for the resulting condition of the workman,
18 but only to the extent such condition was so contributed to and aggravated
19 by the employment.

20 (c) In no case shall an employer be liable for compensation under this
21 section unless disablement results within one (~~1~~) year or death results
22 within three (~~3~~) years in case of silicosis, or one (~~1~~) year in case of any
23 other occupational disease, after the last injurious exposure to the hazard
24 of such disease in such employment, or, in case of death, unless death
25 follows continuous disability from such disease, commencing within the
26 period above limited, for which compensation has been paid or awarded or
27 timely claim made as provided in the workmen's compensation act, and
28 results within seven (~~7~~) years after such last exposure. Where payments
29 have been made on account of any disablement from which death shall
30 thereafter result such payments shall be deducted from the amount of
31 liability provided by law in case of death. The time limit prescribed by this
32 section shall not apply in the case of an employee whose disablement or
33 death is due to occupational exposure to ionizing radiation.

34 (d) Where an occupational disease is aggravated by any disease or
35 infirmity, not itself compensable, or where disability or death from any
36 other cause, not itself compensable, is aggravated, prolonged, accelerated
37 or in any wise contributed to by an occupational disease, the compensation
38 payable shall be reduced and limited to such proportion only of the
39 compensation that would be payable if the occupational disease were the
40 sole cause of the disability or death, as such occupational disease, as a
41 causative factor, bears to all the causes of such disability or death, such
42 reduction in compensation to be effected by reducing the number of
43 weekly or monthly payments or the amounts of such payments, as under

1 the circumstances of the particular case may be for the best interest of the
2 claimant or claimants.

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

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

9 New Sec. ~~27~~ 26. (a) If any provisions of this act or the application
10 thereof to any person or circumstance is held invalid, such invalidity shall
11 not affect other provisions or applications of this act which can be given
12 effect without the invalid provision or application, and to this end the
13 provisions of this act are severable.

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

16 *Sec. 27. K.S.A. 2010 Supp. 44-555c is hereby amended to read as*
17 *follows: 44-555c. (a) There is hereby established the workers*
18 *compensation board. The board shall have exclusive jurisdiction to*
19 *review all decisions, findings, orders and awards of compensation of*
20 *administrative law judges under the workers compensation act. The*
21 *review by the board shall be upon questions of law and fact as presented*
22 *and shown by a transcript of the evidence and the proceedings as*
23 *presented, had and introduced before the administrative law judge. The*
24 *board shall be within the division of workers compensation of the*
25 *department of labor and all budgeting, personnel, purchasing and*
26 *related management functions of the board shall be administered under*
27 *the supervision and direction of the secretary of labor director of workers*
28 *compensation. The board shall consist of five members who shall be*
29 *appointed by the secretary in accordance with this section and who shall*
30 *each serve for a term of four years, except as provided for the first*
31 *members appointed to the board under subsection (f).*

32 (b) (1) *Each board member shall be an attorney regularly admitted*
33 *to practice law in Kansas for a period of at least seven years and shall*
34 *have engaged in the active practice of law during such period as a*
35 *lawyer, judge of a court of record or any court in Kansas or a full-time*
36 *teacher of law in an accredited law school, or any combination of such*
37 *types of practice.*

38 (c) *Each board member shall receive an annual salary in an*
39 *amount equal to the salary prescribed by law for a district judge, except*
40 *that the member who is the chairperson of the workers compensation*
41 *board shall receive an annual salary in an amount equal to the salary*
42 *prescribed for a district judge designated as chief judge of a district*
43 *court of Kansas. The board members shall devote full time to the duties*

1 *of such office and shall not engage in the private practice of law during*
2 *their term of office. No board member may receive additional*
3 *compensation for official services performed by the board member. Each*
4 *board member shall be reimbursed for expenses incurred in the*
5 *performance of such official duties under the same circumstances and to*
6 *the same extent as judges of the district court are reimbursed for such*
7 *expenses.*

8 *(d) Applications for membership on the board shall be submitted to*
9 *the director of workers compensation. The director shall determine if an*
10 *applicant meets the qualifications for membership on the board*
11 *prescribed in subsection (b). Qualified applicants for the board will be*
12 *submitted by the director to the workers compensation board nominating*
13 *committee for consideration secretary of labor.*

14 ~~*(e) There is hereby established the workers compensation board*~~
15 ~~*nominating committee which shall be composed of two members*~~
16 ~~*appointed as follows: The Kansas AFL-CIO and the Kansas chamber of*~~
17 ~~*commerce and industry shall each select one representative to serve on the*~~
18 ~~*workers compensation board nominating committee and shall give written*~~
19 ~~*notice of the selection to the secretary who shall appoint such*~~
20 ~~*representatives to the committee. In the event of a vacancy occurring for*~~
21 ~~*any reason on the nominating committee, the respective member shall be*~~
22 ~~*replaced by the appointing organization with written notice of the*~~
23 ~~*appointment to the secretary of labor within 30 days of such vacancy.*~~

24 ~~*(f) (1) Upon being notified of any vacancy on the board or of the*~~
25 ~~*need to appoint a member pro tem under subsection (i), the nominating*~~
26 ~~*committee, the secretary of labor shall consider all qualified applicants*~~
27 ~~*submitted by the director for the vacant position on the board or the*~~
28 ~~*member pro tem position and nominate a person qualified therefor. The*~~
29 ~~*nominating committee shall be required to reach unanimous agreement on*~~
30 ~~*any nomination to the board. With respect to each person nominated, the*~~
31 ~~*secretary either shall accept and appoint the person nominated by the*~~
32 ~~*nominating committee to the position on the board for which the*~~
33 ~~*nomination was made or shall reject the nomination and request the*~~
34 ~~*nominating committee to nominate another person for that position. Upon*~~
35 ~~*receipt of any such request for the nomination of another person, the*~~
36 ~~*nominating committee shall nominate another person for that position in*~~
37 ~~*the same manner.*~~

38 *(2) The first members of the board established by this section are*
39 *hereby appointed as follows: Each person who was a member of the*
40 *workers compensation board which was in existence on January 12,*
41 *1995, is hereby appointed, effective January 13, 1995, as a member of*
42 *the board established by this section. The term of office of each person*
43 *so appointed as a member of the board established by this section is for*

1 *the period equal to the remainder of the term of office such person had*
2 *as of January 12, 1995, as a member of the workers compensation board*
3 *which was in existence on January 12, 1995.*

4 *(3) Each member of the board shall hold office for the term of the*
5 *appointment and until the successor shall have been appointed.*
6 *Successors to such members shall be appointed for terms of four years.*

7 *(4) If a vacancy should occur on the board during the term of a*
8 *member, the nominating committee secretary shall nominate an*
9 *individual from the qualified applicants submitted by the director to*
10 *complete the remainder of the unexpired portion of the term. With*
11 *respect to each person so nominated, the secretary either shall accept and*
12 *appoint the person nominated to the board or shall reject the nomination*
13 *and request the nominating committee to nominate another person for the*
14 *position. Upon receipt of any such request for the nomination of another*
15 *person, the nominating committee shall nominate another person for the*
16 *position in the same manner.*

17 ~~(g)~~ *(f) Following the completion of a term, board members who*
18 *wish to be considered for reappointment to the board shall be deemed to*
19 *have met the qualification requirements for selection to the board and*
20 *shall be considered for renomination by the workers compensation*
21 *board nominating committee.*

22 ~~(h)~~ *(g) The members of the board shall annually elect one member*
23 *to serve as chairperson.*

24 ~~(i)~~ *(h) If illness or other temporary disability, temporary disability,*
25 *early retirement, death or disablement of a member of the board will not*
26 *permit the member to serve during a case or in any case in which a*
27 *member of the board must be excused from serving because of a conflict*
28 *or is otherwise disqualified with regard to such case, the director shall*
29 *notify the workers compensation nominating committee of the need to*
30 *appoint a member pro tem. Upon receipt of such notice, the committee*
31 *shall act as soon as possible and nominate a qualified person to serve as*
32 *member pro tem in such case in accordance with subsection (f). Each*
33 *member pro tem shall receive compensation at the same rate as a*
34 *member of the board receives, prorated for the hours of actual service as*
35 *a member pro tem and shall receive expenses under the same*
36 *circumstances and to the same extent as a member of the board receives.*
37 *Each member pro tem shall have all the powers, duties and functions of*
38 *a member of the board with regard to the case.*

39 ~~(j)~~ *(i) The board shall maintain principal offices in Topeka, Kansas,*
40 *and the board may conduct hearings at a courthouse of any county in*
41 *Kansas or at another location specified by the board. The secretary of*
42 *labor shall provide a courtroom and other suitable quarters in Topeka,*
43 *Kansas, for the use of the board and its staff. When the board conducts*

1 *hearings at any location other than in Topeka, Kansas, the director shall*
2 *make suitable arrangements for such hearings. Subject to the provisions*
3 *of appropriation acts, the director shall provide such supplies and*
4 *equipment and shall appoint such support personnel as may be*
5 *necessary for the board to fulfill the duties imposed by this act, subject to*
6 *approval by the secretary.*

7 *(*) (j) For purposes of hearing cases, the board may sit together or*
8 *in panels of two members or more, designated by the chairperson of the*
9 *board, except that an appeal from a preliminary award entered under*
10 *K.S.A. 44-534a, and amendments thereto, may be heard by a panel of*
11 *one member designated by the chairperson. All members of the board*
12 *shall determine each matter before the board. All decisions, reviews and*
13 *determinations by the board shall be approved in writing by at least three*
14 *board members. Whenever the board enters a final order in any*
15 *proceeding, the board shall make written findings of fact and*
16 *conclusions of law forming the basis of the board's determination and*
17 *final order. The findings of fact and conclusions of law of the board*
18 *shall be made a part of the final order. The board shall mail a copy of*
19 *the final order of the board to all parties to the proceeding within three*
20 *days following the issuance of the final order.*

21 Sec. 28. K.S.A. 44-503a, 44-510a, 44-510c, 44-510d, 44-510e, 44-
22 510f, 44-515, 44-516, 44-520, 44-520a, 44-525, 44-528, 44-531, 44-532a,
23 44-534a, 44-536 and 44-5a01 and K.S.A. 2010 Supp. 44-501, 44-508, 44-
24 510b, 44-510h, 44-510k, 44-511, 44-523, 44-552 ~~and 44-596~~ and 44-555c
25 are hereby repealed.

26 Sec. 29. This act shall take effect and be in force from and after its
27 publication in the ~~statute book~~ *Kansas register*.