

[As Amended by House Committee of the Whole]

Session of 2011

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

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
11 workers compensation act shall be liberally construed only for the
12 purpose of bringing employers and employees within the provisions of
13 the act. The provisions of the workers compensation act shall be
14 applied impartially to both employers and employees in cases arising
15 thereunder.

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

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

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

1 is payable by such employer.

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

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

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

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

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

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

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

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

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

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

39 Sec. 4. K.S.A. 2010 Supp. 44-501 is hereby amended to read as

1 follows: 44-501. ~~(a) If in any employment to which the workers-~~
2 ~~compensation act applies, personal injury by accident arising out of and~~
3 ~~in the course of employment is caused to an employee, the employer~~
4 ~~shall be liable to pay compensation to the employee in accordance with~~
5 ~~the provisions of the workers compensation act. In proceedings under~~
6 ~~the workers compensation act, the burden of proof shall be on the~~
7 ~~claimant to establish the claimant's right to an award of compensation~~
8 ~~and to prove the various conditions on which the claimant's right~~
9 ~~depends. In determining whether the claimant has satisfied this burden~~
10 ~~of proof, the trier of fact shall consider the whole record.~~

11 ~~(b) Except as provided in the workers compensation act, no~~
12 ~~employer, or other employee of such employer, shall be liable for any~~
13 ~~injury for which compensation is recoverable under the workers-~~
14 ~~compensation act nor shall an employer be liable to any third party for~~
15 ~~any injury or death of an employee which was caused under~~
16 ~~circumstances creating a legal liability against a third party and for~~
17 ~~which workers compensation is payable by such employer.~~

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

23 ~~(d) (1) If the injury to the employee results from the employee's~~
24 ~~deliberate intention to cause such injury; or from the employee's willful~~
25 ~~failure to use a guard or protection against accident required pursuant to~~
26 ~~any statute and provided for the employee, or a reasonable and proper~~
27 ~~guard and protection voluntarily furnished the employee by the~~
28 ~~employer, any compensation in respect to that injury shall be~~
29 ~~disallowed.~~

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

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

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

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

39 ~~(4) the employee's knowing or reckless violation of their~~

1 *employer's workplace safety rules or regulations; or*
2 *(5) the employee's voluntary participation in fighting or horseplay*
3 *for any reason, work related or otherwise.*

4 *(b) No compensation[, except for medical benefits provided*
5 **pursuant to K.S.A. 44-510h, and amendments thereto,]** *shall be*
6 *allowed for any employee who was unlawfully present in the United*
7 *States, or who did not have the legal right or authorization under*
8 *federal law to work in the United States, as defined by 8 U.S.C. §*
9 *1324a, except that compensation shall be allowed if the employer hired*
10 *such employee with the knowledge that such employee was unlawfully*
11 *present in the United States or did not have the legal right or*
12 *authorization under federal law to work in the United States. Nothing*
13 *in this subsection shall be construed to disallow any state or local*
14 *public benefits that are required to be offered by 8 U.S.C. § 1621.*

15 *(c) (1) (A) The employer shall not be liable under the workers*
16 *compensation act where the injury, disability or death was contributed*
17 *to by the employee's use or consumption of alcohol or any drugs,*
18 *chemicals or any other compounds or substances, including, but not*
19 *limited to, any drugs or medications which are available to the public*
20 *without a prescription from a health care provider, prescription drugs or*
21 *medications, any form or type of narcotic drugs, marijuana, stimulants,*
22 *depressants or hallucinogens.*

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

30 *(C) It shall be conclusively presumed that the employee was*
31 *impaired due to alcohol or drugs if it is shown that, at the time of the*
32 *injury, ~~that~~ the employee had an alcohol concentration of .04 or more,*
33 *or a GCMS confirmatory test by quantitative analysis showing a*
34 *concentration at or above the levels shown on the following chart for*
35 *the drugs of abuse listed:*

36

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

38 Marijuana metabolite ¹.....15

39 Cocaine metabolite ².....150

1	Opiates:	
2	Morphine.....	2000
3	Codeine.....	2000
4	6-Acetylmorphine ⁴	10 ng/ml
5	Phencyclidine.....	25
6	Amphetamines:	
7	Amphetamine.....	500
8	Methamphetamine ³	500
9	<i>Confirmatory test cutoff levels for oral (ng/ml)</i>	
10	<i>Amphetamines.....</i>	<i>40</i>
11	<i>Methamphetamines³.....</i>	<i>40</i>
12	<i>Phencyclidine.....</i>	<i>0.5</i>
13	<i>Cocaine².....</i>	<i>2</i>
14	<i>Opiates.....</i>	<i>10</i>
15	<i>Marijuana¹.....</i>	<i>0.5</i>

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

17 ² Benzoylcegonine.

18 ³ Specimen must also contain amphetamine at a concentration greater than or equal to
19 ~~200~~100 ng/ml.

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

21 (D) *If it is shown that the employee was impaired pursuant to*
22 *subsection (c)(1)(C) at the time of the injury, there shall be a rebuttable*
23 *presumption that the accident, injury, disability or death was*
24 *contributed to by such impairment. The employee may overcome the*
25 *presumption of contribution by clear and convincing evidence.*

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

34 (F) *When an injured employee seeks medical care following an*
35 *accident or injury without sufficient notice to the employer such that*
36 *the employer can timely request a chemical test, compensation under*
37 *the workers compensation act shall be disallowed unless the employee*
38 *demonstrates just cause for failing to provide timely notification to the*
39 *employer.*

40 (2) The results of a chemical test shall ~~not~~ be admissible evidence

- 1 to prove impairment ~~unless the following conditions were met~~ if the
2 employer establishes that the testing was done under any of the
3 following circumstances:
- 4 (A) As a result of an employer mandated drug testing policy, in
5 place in writing prior to the date of accident or injury, requiring any
6 worker to submit to testing for drugs or alcohol;
- 7 (B) during an autopsy or in the normal course of medical
8 treatment for reasons related to the health and welfare of the injured
9 worker and not at the direction of the employer;
- 10 (C) the worker, prior to the date and time of the accident or injury,
11 gave written consent to the employer that the worker would voluntarily
12 submit to a chemical test for drugs or alcohol following any accident
13 or injury;
- 14 (D) the worker voluntarily agrees to submit to a chemical test for
15 drugs or alcohol following any accident or injury; or
- 16 (E) as a result of federal or state law or a federal or state rule or
17 regulation having the force and effect of law requiring a post-injury
18 testing program and such required program was properly implemented
19 at the time of testing.
- 20 (3) Notwithstanding subsection ~~(b)~~ [(c)](2), the results of a
21 chemical test performed on a sample collected by an employer shall
22 not be admissible evidence to prove impairment unless the following
23 conditions are met:
- 24 (A) ~~There was probable cause to believe that the employee used,~~
25 ~~had possession of, or was impaired by the drug or alcohol while~~
26 ~~working;~~
- 27 ~~(B)~~ The test sample was collected at a time contemporaneous with
28 the events establishing probable cause within a reasonable time
29 following the accident or injury;
- 30 ~~(C)~~(B) the collecting and labeling of the test sample was
31 performed by or under the supervision of a licensed health care
32 professional;
- 33 ~~(D)~~(C) the test was performed by a laboratory approved by the
34 United States department of health and human services or licensed by
35 the department of health and environment, except that a blood sample
36 may be tested for alcohol content by a laboratory commonly used for
37 that purpose by state law enforcement agencies;
- 38 ~~(E)~~(D) the test was confirmed by gas chromatography-mass
39 spectroscopy or other comparably reliable analytical method, except

1 that no such confirmation is required for a blood alcohol sample; ~~and~~
2 ~~(F)~~(E) the foundation evidence must establish, beyond a
3 reasonable doubt, that the test results were from the sample taken from
4 the employee.; *and*

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

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

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

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

33 ~~(C) the worker, prior to the date and time of the accident, gave~~
34 ~~written consent to the employer that the worker would voluntarily~~
35 ~~submit to a chemical test for drugs or alcohol following any accident~~
36 ~~requiring the worker to obtain medical treatment for the injuries~~
37 ~~suffered. If after suffering an accident requiring medical treatment, the~~
38 ~~worker refuses to submit to a chemical test for drugs or alcohol, this~~
39 ~~refusal shall be considered evidence of impairment, however, there~~

1 ~~must be evidence that the presumed impairment contributed to the~~
2 ~~accident as required by this section; or~~

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

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

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

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

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

36 *(1) Where workers compensation benefits have previously been*
37 *awarded through settlement or judicial or administrative determination*
38 *in Kansas, the percentage basis of the prior settlement or award shall*
39 *conclusively establish the amount of functional impairment determined*

1 *to be preexisting. Where workers compensation benefits have not*
2 *previously been awarded through settlement or judicial or*
3 *administrative determination in Kansas, the amount of preexisting*
4 *functional impairment shall be established by competent evidence.*

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

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

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

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

35 Sec. 5. K.S.A. 44-503a is hereby amended to read as follows: 44-
36 503a. Whenever an employee is engaged in multiple employment, in
37 which such employee performs the same or a very similar type of work
38 on a part-time basis for each of two (2) or more employers, and such
39 employee sustains an injury by ~~accident~~ which arose out of and in the

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

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

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

38 (b) "Workman" or "employee" or "worker" means any person who
39 has entered into the employment of or works under any contract of

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

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

37 (2) "Members of a family" means only surviving legal spouse and
38 children; or if no surviving legal spouse or children, then parents or
39 grandparents; or if no parents or grandparents, then grandchildren; or if

1 no grandchildren, then brothers and sisters. In the meaning of this
2 section, parents include stepparents, children include stepchildren,
3 grandchildren include stepgrandchildren, brothers and sisters include
4 stepbrothers and stepsisters, and children and parents include that
5 relation by legal adoption. In the meaning of this section, a surviving
6 spouse shall not be regarded as a dependent of a deceased employee or
7 as a member of the family, if the surviving spouse shall have for more
8 than six months willfully or voluntarily deserted or abandoned the
9 employee prior to the date of the employee's death.

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

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

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

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

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

23 (d) "Accident" means an undesigned, sudden and unexpected
24 *traumatic* event or events, usually of an afflictive or unfortunate nature
25 and often, but not necessarily, accompanied by a manifestation of force.
26 ~~The elements of an accident, as stated herein, are not to be construed in~~
27 ~~a strict and literal sense, but in a manner designed to effectuate the~~
28 ~~purpose of the workers compensation act that the employer bear the~~
29 ~~expense of accidental injury to a worker caused by the employment. In~~
30 ~~cases where the accident occurs as a result of a series of events,~~
31 ~~repetitive use, cumulative traumas or microtraumas, the date of~~
32 ~~accident shall be the date the authorized physician takes the employee~~
33 ~~off work due to the condition or restricts the employee from performing~~
34 ~~the work which is the cause of the condition. In the event the worker is~~
35 ~~not taken off work or restricted as above described, then the date of~~
36 ~~injury shall be the earliest of the following dates: (1) The date upon~~
37 ~~which the employee gives written notice to the employer of the injury;~~
38 ~~or (2) the date the condition is diagnosed as work related, provided~~
39 ~~such fact is communicated in writing to the injured worker. In cases~~

1 ~~where none of the above criteria are met, then the date of accident shall~~
2 ~~be determined by the administrative law judge based on all the~~
3 ~~evidence and circumstances; and in no event shall the date of accident~~
4 ~~be the date of, or the day before the regular hearing. Nothing in this~~
5 ~~subsection shall be construed to preclude a worker's right to make a~~
6 ~~claim for aggravation of injuries under the workers compensation~~
7 ~~act.~~ *An accident shall be identifiable by time and place of occurrence, at*
8 *the time produce symptoms of an injury, and occur during a single*
9 *work shift. The accident must be the prevailing factor in causing the*
10 *injury. "Accident" shall in no case be construed to include repetitive*
11 *trauma in any form.*

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

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

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

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

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

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

32 *In no case shall the date of accident be later than the last date*
33 *worked.*

34 ~~(e)~~ *(f) (1) "Personal injury" and "injury" mean any lesion or change*
35 *in the physical structure of the body, causing damage or harm thereto;*
36 *so that it gives way under the stress of the worker's usual labor. It is not*
37 *essential that such lesion or change be of such character as to present*
38 *external or visible signs of its existence. An injury shall not be deemed*
39 *to have been directly caused by the employment where it is shown that*

1 ~~the employee suffers disability as a result of the natural aging process~~
2 ~~or by the normal activities of day-to-day living. Personal injury or~~
3 ~~injury may occur only by accident, repetitive trauma, or occupational~~
4 ~~disease as those terms are defined.~~

5 (2) *An injury is compensable only if it “arises out of and in the*
6 *course of employment.” An injury is not compensable because work*
7 *was a triggering or precipitating factor. An injury is not compensable*
8 *solely because it aggravates, accelerates or exacerbates a preexisting*
9 *condition or renders a preexisting condition symptomatic.*

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

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

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

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

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

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

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

26 (iii) *the accident is the prevailing factor causing the injury,*
27 *medical condition, and resulting disability or impairment.*

28 (3) (A) *The words “arising out of and in the course of*
29 *employment” as used in the workers compensation act shall not be*
30 *construed to include:*

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

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

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

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

39 ~~(B)~~ *The words "arising out of and in the course of employment"*

1 as used in the workers compensation act shall not be construed to
2 include injuries to the employee occurring while the employee is on the
3 way to assume the duties of employment or after leaving such duties,
4 the proximate cause of which injury is not the employer's negligence.
5 An employee shall not be construed as being on the way to assume the
6 duties of employment or having left such duties at a time when the
7 worker is on the premises *owned or under the exclusive control* of the
8 employer or on the only available route to or from work which is a
9 route involving a special risk or hazard *connected with the nature of the*
10 *employment that is not a risk or hazard to which the general public is*
11 *exposed* and which is a route not used by the public except in dealings
12 with the employer. An employee shall not be construed as being on the
13 way to assume the duties of employment, if the employee is a provider
14 of emergency services responding to an emergency.

15 (C) The words, "arising out of and in the course of employment"
16 as used in the workers compensation act shall not be construed to
17 include injuries to employees while engaged in recreational or social
18 events under circumstances where ~~the employee was under no duty to~~
19 ~~attend and where the injury did not result from the performance of tasks~~
20 ~~related to the employee's normal job duties or as specifically instructed~~
21 ~~to be performed by the employer.~~ *the employee's participation in a*
22 *recreational activity or social event is the prevailing factor of the*
23 *injury, even in the event that the employer invited, promoted, sponsored*
24 *or supported the recreational activity or social event, expressly or*
25 *implicitly, in whole or in part. The provisions of this paragraph shall*
26 *not apply when:*

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

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

31 (3) *the injury from such recreational activity or social event*
32 *occurs on the employer's premises due to an unsafe condition and the*
33 *employer had actual knowledge of the employee's participation in the*
34 *recreational activity or social event and of the unsafe condition of the*
35 *premises and failed to either curtail the recreational activity or social*
36 *event and cure the unsafe condition.*

37 (g) *"Prevailing" as it relates to the term "factor," means the*
38 *primary factor; in relation to any other factor. In determining what*
39 *constitutes the "prevailing factor" in a given case, the administrative*

1 *law judge shall consider all relevant evidence submitted by the parties.*

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

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

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

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

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

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

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

- 1 ~~(h)~~(o) "Peer review" means an evaluation by a peer review
2 committee of the appropriateness, quality and cost of health care and
3 health services provided a patient, which is based on accepted standards
4 of the health care profession involved and which is conducted in
5 conjunction with utilization review.
- 6 ~~(h)~~(p) "Peer review committee" means a committee composed of
7 health care providers licensed to practice the same health care
8 profession as the health care provider who rendered the health care
9 services being reviewed.
- 10 ~~(h)~~(q) "Group-funded self-insurance plan" includes each group-
11 funded workers compensation pool, which is authorized to operate in
12 this state under K.S.A. 44-581 through 44-592, and amendments
13 thereto, each municipal group-funded pool under the Kansas municipal
14 group-funded pool act which is covering liabilities under the workers
15 compensation act, and any other similar group-funded or pooled plan or
16 arrangement that provides coverage for employer liabilities under the
17 workers compensation act and is authorized by law.
- 18 ~~(h)~~(r) On and after the effective date of this act, "workers
19 compensation board" or "board" means the workers compensation
20 board established under K.S.A. 44-555c, and amendments thereto.
- 21 ~~(h)~~(s) "Usual charge" means the amount most commonly charged
22 by health care providers for the same or similar services.
- 23 ~~(h)~~(t) "Customary charge" means the usual rates or range of fees
24 charged by health care providers in a given locale or area.
- 25 (u) *"Functional impairment" means the extent, expressed as a*
26 *percentage, of the loss of a portion of the total physiological*
27 *capabilities of the human body as established by competent medical*
28 *evidence and based on the fourth edition of the American medical*
29 *association guides to the evaluation of impairment, if the impairment is*
30 *contained therein.*
- 31 (v) *"Authorized treating physician" means a licensed physician or*
32 *other medical provider authorized by the employer or insurance*
33 *carrier or both, or appointed pursuant to court-order to provide those*
34 *medical services deemed necessary to diagnose and treat an injury*
35 *arising out of and in the course of employment.*
- 36 (w) *"Mail" means the use of the United States postal service or*
37 *other land based delivery service or transmission by electronic means,*
38 *including delivery by fax, e-mail or other electronic delivery method*
39 *designated by the director of workers compensation.*

1 Sec. 7. K.S.A. 2010 Supp. 44-510b is hereby amended to read as
2 follows: 44-510b. Where death results from injury, compensation shall
3 be paid as provided in K.S.A. 44-510h and 44-510i, and amendments
4 thereto, and as follows:

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

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

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

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

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

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

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

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

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

29 (d) If an employee does not leave any dependents, either wholly or
30 partially dependent upon the employee, a lump-sum payment of
31 \$25,000 shall be made to the legal heirs of such employee in
32 accordance with Kansas law. However under no circumstances shall
33 such payment escheat to the state. Notwithstanding the provisions of
34 this subsection, no such payment shall be required if the employer has
35 procured a life insurance policy, with beneficiaries designated by the
36 employee, providing coverage in an amount not less than \$18,500.

37 (e) The administrative law judge, except as otherwise provided in
38 this section, shall have the power and authority to apportion and
39 reapportion the compensation allowed under this section, either to

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

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

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

18 (h) Notwithstanding any other provision in this section to the
19 contrary, the maximum amount of compensation benefits payable under
20 this section, including the initial payment in subsection (a) to any and
21 all dependents by the employer shall not exceed a total amount of
22 ~~\$250,000~~*\$300,000* and when such total amount has been paid the
23 liability of the employer for any further compensation under this
24 section to dependents, other than minor children of the employee, shall
25 cease except that the payment of compensation under this section to
26 any minor child of the employee shall continue for the period of the
27 child's minority at the weekly rate in effect when the employer's
28 liability is otherwise terminated under this subsection and shall not be
29 subject to termination under this subsection until such child becomes
30 18 years of age.

31 (i) Persons receiving benefits under this section shall submit an
32 annual statement to the insurance carrier, self-insured employer or
33 group-funded workers compensation pool paying the benefits, in such
34 form and containing such information relating to eligibility for
35 compensation under this section as may be required by rules and
36 regulations of the director. If the person receiving benefits under this
37 section is a surviving spouse or a dependent child who has reached the
38 age of majority, such person shall personally submit an annual
39 statement. If the person receiving benefits under this section is a

1 dependent child subject to a conservator, the conservator of such child
2 shall submit the annual statement. If such person fails to submit an
3 annual statement, the payer of benefits may notify the director of such
4 failure and the director shall notify the person of the failure by certified
5 mail with return receipt. If such person fails to submit the annual
6 statement or fails to reasonably provide the required information within
7 30 days after receipt of the notice from the director, all compensation
8 benefits paid under this section to such person shall be suspended until
9 the annual statement is submitted in proper form to the payer of
10 benefits.

11 Sec. 8. K.S.A. 44-510c is hereby amended to read as follows: 44-
12 510c. Where death does not result from the injury, compensation shall
13 be paid as provided in K.S.A. 44-510h and 44-510i, and amendments
14 thereto and as follows:

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

26 (2) Permanent total disability exists when the employee, on
27 account of the injury, has been rendered completely and permanently
28 incapable of engaging in any type of substantial and gainful
29 employment. ~~Loss of both eyes, both hands, both arms, both feet, or~~
30 ~~both legs, or any combination thereof, in the absence of proof to the~~
31 ~~contrary, shall constitute a permanent total disability. Substantially total~~
32 ~~paralysis, or incurable imbecility or insanity, resulting from injury~~
33 ~~independent of all other causes, shall constitute permanent total~~
34 ~~disability. In all other cases permanent total disability shall be~~
35 ~~determined in accordance with the facts. *Expert evidence shall be*~~
36 ~~*required to prove permanent total disability.*~~

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

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

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

26 (B) *Where the employee remains employed with the employer*
27 *against whom benefits are sought, an employee shall be entitled to*
28 *temporary total disability benefits if the authorized treating physician*
29 *imposed temporary restrictions as a result of the work injury which the*
30 *employer cannot accommodate. The employer is permitted to provide*
31 *work which will meet the restrictions for the employee at the*
32 *employer's own company or at any other for-profit or not-for-profit*
33 *organization or company. A refusal by the employee of accommodated*
34 *work within the temporary restrictions imposed by the authorized*
35 *treating physician shall result in a rebuttable presumption that the*
36 *employee is ineligible to receive temporary total disability benefits.*

37 (C) *If the employee has been terminated for cause or voluntarily*
38 *resigns following a compensable injury, the employer shall not be*
39 *liable for temporary total disability benefits if the employer could have*

1 *accommodated the temporary restrictions imposed by the authorized*
 2 *treating physician but for the employee's separation from employment.*

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

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

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

19 Sec. 9. K.S.A. 44-510d is hereby amended to read as follows: 44-
 20 510d. (a) Where disability, partial in character but permanent in quality,
 21 results from the injury, the injured employee shall be entitled to the
 22 compensation provided in K.S.A. 44-510h and 44-510i, and
 23 amendments thereto, ~~but~~. *The injured employee may be entitled to*
 24 *payment of temporary total disability as defined in K.S.A. 44-510c, and*
 25 *amendments thereto, or temporary partial disability as defined in*
 26 *subsection (a)(1) of K.S.A. 44-510e, and amendments thereto, provided*
 27 *that the injured employee shall not be entitled to any other or further*
 28 *compensation for or during the first week following the injury unless*
 29 *such disability exists for three consecutive weeks, in which event*
 30 *compensation shall be paid for the first week. Thereafter compensation*
 31 *shall be paid for temporary total loss of use and/or temporary partial*
 32 *disability as provided in the following schedule, 66²/₃% of the average*
 33 *gross weekly wages to be computed as provided in K.S.A. 44-511, and*
 34 *amendments thereto, except that in no case shall the weekly*
 35 *compensation be more than the maximum as provided for in K.S.A. 44-*
 36 *510c, and amendments thereto.*

37 (b) If there is an award of permanent disability as a result of the
 38 injury there shall be a presumption that disability existed immediately
 39 after the injury and compensation is to be paid for not to exceed the

- 1 number of weeks allowed in the following schedule:
- 2 (1) For loss of a thumb, 60 weeks.
- 3 (2) For the loss of a first finger, commonly called the index finger,
- 4 37 weeks.
- 5 (3) For the loss of a second finger, 30 weeks.
- 6 (4) For the loss of a third finger, 20 weeks.
- 7 (5) For the loss of a fourth finger, commonly called the little
- 8 finger, 15 weeks.
- 9 (6) Loss of the first phalange of the thumb or of any finger shall be
- 10 considered to be equal to the loss of $\frac{1}{2}$ of such thumb or finger, and the
- 11 compensation shall be $\frac{1}{2}$ of the amount specified above. The loss of the
- 12 first phalange and any part of the second phalange of any finger, which
- 13 includes the loss of any part of the bone of such second phalange, shall
- 14 be considered to be equal to the loss of $\frac{2}{3}$ of such finger and the
- 15 compensation shall be $\frac{2}{3}$ of the amount specified above. The loss of the
- 16 first phalange and any part of the second phalange of a thumb which
- 17 includes the loss of any part of the bone of such second phalange, shall
- 18 be considered to be equal to the loss of the entire thumb. The loss of the
- 19 first and second phalanges and any part of the third proximal phalange
- 20 of any finger, shall be considered as the loss of the entire finger.
- 21 Amputation through the joint shall be considered a loss to the next
- 22 higher schedule.
- 23 (7) For the loss of a great toe, 30 weeks.
- 24 (8) For the loss of any toe other than the great toe, 10 weeks.
- 25 (9) The loss of the first phalange of any toe shall be considered to
- 26 be equal to the loss of $\frac{1}{2}$ of such toe and the compensation shall be $\frac{1}{2}$ of
- 27 the amount above specified.
- 28 (10) The loss of more than one phalange of a toe shall be
- 29 considered to be equal to the loss of the entire toe.
- 30 (11) For the loss of a hand, 150 weeks.
- 31 (12) For the loss of a forearm, 200 weeks.
- 32 (13) For the loss of an arm, excluding the shoulder joint, shoulder
- 33 girdle, shoulder musculature or any other shoulder structures, 210
- 34 weeks, and for the loss of an arm, including the shoulder joint, shoulder
- 35 girdle, shoulder musculature or any other shoulder structures, 225
- 36 weeks.
- 37 (14) For the loss of a foot, 125 weeks.
- 38 (15) For the loss of a lower leg, 190 weeks.
- 39 (16) For the loss of a leg, 200 weeks.

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

3 (18) Amputation or severance below the wrist shall be considered
4 as the loss of a hand. Amputation at the wrist and below the elbow shall
5 be considered as the loss of the forearm. Amputation at or above the
6 elbow shall be considered loss of the arm. Amputation below the ankle
7 shall be considered loss of the foot. Amputation at the ankle and below
8 the knee shall be considered as loss of the lower leg. Amputation at or
9 above the knee shall be considered as loss of the leg.

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

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

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

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

39 (23) Loss of *or loss of use of* a scheduled member shall be based

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

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

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

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

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

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

39 *(3) multiply the number of weeks determined in paragraph (2) of*

1 *this subsection (d) by the payment rate determined in paragraph (1) of*
2 *this subsection (d).*

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

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

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

26 (2) (A) Permanent partial general disability exists when the
27 employee is disabled in a manner which is partial in character and
28 permanent in quality and which is not covered by the schedule in
29 K.S.A. 44-510d, and amendments thereto. ~~The extent of permanent~~
30 ~~partial general disability shall be the extent, expressed as a percentage,~~
31 ~~to which the employee, in the opinion of the physician, has lost the~~
32 ~~ability to perform the work tasks that the employee performed in any~~
33 ~~substantial gainful employment during the fifteen-year period~~
34 ~~preceding the accident, averaged together with the difference between~~
35 ~~the average weekly wage the worker was earning at the time of the~~
36 ~~injury and the average weekly wage the worker is earning after the~~
37 ~~injury. In any event, the extent of permanent partial general disability~~
38 ~~shall not be less than the percentage of functional impairment.~~
39 Functional impairment means the extent, expressed as a percentage, of

~~1 the loss of a portion of the total physiological capabilities of the human~~
~~2 body as established by competent medical evidence and based on the~~
~~3 fourth edition of the American Medical Association Guides to the~~
~~4 Evaluation of Permanent Impairment, if the impairment is contained~~
~~5 therein. An employee shall not be entitled to receive permanent partial~~
~~6 general disability compensation in excess of the percentage of~~
~~7 functional impairment as long as the employee is engaging in any work~~
~~8 for wages equal to 90% or more of the average gross weekly wage that~~
~~9 the employee was earning at the time of the injury. If the employer and~~
~~10 the employee are unable to agree upon the employee's functional~~
~~11 impairment and if at least two medical opinions based on competent~~
~~12 medical evidence disagree as to the percentage of functional~~
~~13 impairment, such matter may be referred by the administrative law~~
~~14 judge to an independent health care provider who shall be selected by~~
~~15 the administrative law judge from a list of health care providers~~
~~16 maintained by the director. The health care provider selected by the~~
~~17 director pursuant to this section shall issue an opinion regarding the~~
~~18 employee's functional impairment which shall be considered by the~~
~~19 administrative law judge in making the final determination.~~
~~20 Compensation for permanent partial general disability shall also be~~
~~21 paid as provided in this section where an injury results in:~~
~~22 (i) The loss of or loss of use of a shoulder, arm, forearm or hand of~~
~~23 one upper extremity, combined with the loss of or loss of use of a~~
~~24 shoulder, arm, forearm or hand of the other upper extremity;~~
~~25 (ii) the loss of or loss of use of a leg, lower leg or foot of one~~
~~26 lower extremity, combined with the loss of or loss of use of a leg, lower~~
~~27 leg or foot of the other lower extremity; or~~
~~28 (iii) the loss of or loss of use of both eyes.~~
~~29 (B) The extent of permanent partial general disability shall be the~~
~~30 percentage of functional impairment the employee sustained on~~
~~31 account of the injury as established by competent medical evidence and~~
~~32 based on the fourth edition of the American medical association guides~~
~~33 to the evaluation of permanent impairment, if the impairment is~~
~~34 contained therein.~~
~~35 (C) An employee may be eligible to receive permanent partial~~
~~36 general disability compensation in excess of the percentage of~~
~~37 functional impairment if:~~
~~38 (i) The percentage of functional impairment determined to be~~
~~39 caused solely by the injury exceeds 7½% to the body as a whole or the~~

1 overall functional impairment is equal to or exceeds 10% to the body
2 as a whole in cases where there is preexisting functional impairment;
3 and

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

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

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

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

39 (i) To establish post-injury wage loss, the employee must have the

1 *legal capacity to enter into a valid contract of employment. Wage loss*
 2 *caused by voluntary resignation or termination for cause shall in no*
 3 *way be construed to be caused by the injury.*

4 *(ii) The actual or projected weekly value of any employer-paid*
 5 *fringe benefits are to be included as part of the worker's post-injury*
 6 *average weekly wage and shall be added to the wage imputed by the*
 7 *administrative law judge pursuant to subsection (a)(2)(E) of K.S.A. 44-*
 8 *510e, and amendments thereto.*

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

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

16 ~~(+)~~*(i) Find the payment rate which shall be the lesser of (A) the*
 17 *amount determined by multiplying the average gross weekly wage of*
 18 *the worker prior to such injury by 66²/₃% or (B) the maximum provided*
 19 *in K.S.A. 44-510c, and amendments thereto;*

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

31 ~~(-)~~*(iii) multiply the number of disability weeks determined in*
 32 *paragraph (2) of this subsection (a)subsection (a)(2)(F) by the payment*
 33 *rate determined in paragraph (1) of this subsection (a)subsection (a)(2)*
 34 *(F)(i).*

35 **[To calculate the number of weeks of temporary disability**
 36 **compensation to be deducted pursuant to subparagraph (F)(ii),**
 37 **divide the sum of all temporary total and temporary partial**
 38 **disability compensation paid by the payment rate determined in**
 39 **subsection (a)(2)(E)(i).]**

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

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

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

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

36 (e) In any case of injury to or death of an employee, where the
37 employee or the employee's dependents are entitled to compensation
38 under the workers compensation act, such compensation shall be
39 exclusive of all other remedies or causes of action for such injury or

1 death, and no claim or action shall inure, accrue to or exist in favor of
2 the surviving spouse or any relative or next of kin of such employee
3 against such employer on account of any damage resulting to such
4 surviving spouse or any relative or next of kin on account of the loss of
5 earnings, services, or society of such employee or on any other account
6 resulting from or growing out of the injury or death of such employee.

7 Sec. 11. K.S.A. 44-510f is hereby amended to read as follows: 44-
8 510f. (a) Notwithstanding any provision of the workers compensation
9 act 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~~
14 ~~aggravation thereof~~;

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

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

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

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

34 (2) may be withheld from the employee's wages in weekly
35 amounts ~~the same as equal to~~ the weekly amount or amounts paid in
36 excess of compensation due, ~~but not until and unless~~ *The excess*
37 *amount paid may only be withheld from the employee's wages if the*
38 *employee's average gross weekly wage for the calendar year exceeds*
39 *125% of the state's average weekly wage, determined as provided in*

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

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

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

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

39 (c) An injured employee whose injury or disability has been

1 established under the workers compensation act may rely, if done in
2 good faith, solely or partially on treatment by prayer or spiritual means
3 in accordance with the tenets of practice of a church or religious
4 denomination without suffering a loss of benefits subject to the
5 following conditions:

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

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

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

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

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

18 (d) In any employment to which the workers compensation act
19 applies, the employer shall be liable to each employee who is employed
20 as a duly authorized law enforcement officer, firefighter, driver of an
21 ambulance as defined in subsection (b) of K.S.A. 65-6112, and
22 amendments thereto, an ambulance attendant as defined in subsection
23 (d) of K.S.A. 65-6112, and amendments thereto, or a member of a
24 regional emergency medical response team as provided in K.S.A. 48-
25 928, and amendments thereto, including any person who is serving on a
26 volunteer basis in such capacity, for all reasonable and necessary
27 preventive medical care and treatment for hepatitis to which such
28 employee is exposed under circumstances arising out of and in the
29 course of employment.

30 (e) *It is presumed that the employer's obligation to provide the*
31 *services of a health care provider, and such medical, surgical and*
32 *hospital treatment, including nursing, medicines, medical and surgical*
33 *supplies, ambulance, crutches, apparatus and transportation to and*
34 *from the home of the injured employee to a place outside the*
35 *community in which such employee resides, and within such community*
36 *if the director, in the director's discretion, so orders, including*
37 *transportation expenses computed in accordance with subsection (a) of*
38 *K.S.A. 44-515, and amendments thereto, shall terminate upon the*
39 *employee reaching maximum medical improvement. Such presumption*

1 *may be overcome with medical evidence that it is more probably true*
2 *than not that additional medical treatment will be necessary after such*
3 *time as the employee reaches maximum medical improvement. The*
4 *term “medical treatment” as used in this subsection (e) means only*
5 *that treatment provided or prescribed by a licensed healthcare provider*
6 *and shall not include home exercise programs or over-the-counter*
7 *medications.*

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

18 (2) The administrative law judge can (A) make an award for
19 further medical care if the administrative law judge finds *that it is more*
20 *probably true than not that the injury which was the subject of the*
21 *underlying award is the prevailing factor in the need for further*
22 *medical care and that the care requested is necessary to cure or relieve*
23 *the effects of the accidental injury which was the subject of the*
24 ~~*underlying award such injury, or (B) terminate or modify an award of*~~
25 *current or future medical care if the administrative law judge finds that*
26 *no further medical care is required, the injury which was the subject of*
27 *the underlying award is not the prevailing factor in the need for further*
28 *medical care, or that the care requested is not necessary to cure or*
29 *relieve the effects of such injury.*

30 (3) *If the claimant has not received medical treatment, as defined*
31 *in subsection (e) of K.S.A. 44-510h, and amendments thereto, [from an*
32 **authorized medical provider] within two years from the date of the**
33 *award or two years from the date the claimant last received medical*
34 *treatment [from an authorized medical provider], the employer shall*
35 *be permitted to make application under this section for permanent*
36 *termination of future medical benefits. In such case, there shall be a*
37 *presumption that no further medical care is needed as a result of the*
38 *underlying injury. The presumption may be overcome by competent*
39 *medical evidence.*

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

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

22 (c) The administrative law judge may award attorney fees and
23 costs on the claimant's behalf consistent with subsection (g) of K.S.A.
24 44-536, and amendments thereto. As used in this subsection, "costs"
25 include, but are not limited to, witness fees, mileage allowances, any
26 costs associated with reproduction of documents that become a part of
27 the hearing record, the expense of making a record of the hearing and
28 such other charges as are by statute authorized to be taxed as costs.

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

31 (1) The term "money" shall be construed to mean the gross
32 remuneration, on an hourly, output, salary, commission or other basis;
33 ~~at which the service rendered is recompensed in money by the~~
34 ~~employer, but it earned while employed by the employer, including~~
35 ~~bonuses and gratuities. Money shall not include any additional~~
36 ~~compensation, as defined in this section, any remuneration in any~~
37 ~~medium other than cash, or any other compensation or benefits~~
38 ~~received by the employee from the employer or any other source~~
39 *paragraph 2.*

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

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

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

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

37 (4) ~~The term "part-time hourly employee" shall mean and include~~
38 ~~any employee paid on an hourly basis: (A) Who by custom and practice~~
39 ~~or under the verbal or written employment contract in force at the time~~

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

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

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

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

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

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

39 (4) ~~If at the time of the accident the employee's money rate was~~

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

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

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

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

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

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

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

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

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

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

39 ~~(5) (A) *The average weekly wage of a person serving on a*~~

1 volunteer basis as a duly authorized law enforcement officer,
2 ambulance attendants and drivers as provided in subsection (b) of
3 K.S.A. 44-508, and amendments thereto, firefighter or members of
4 regional emergency medical response teams as provided in K.S.A. 48-
5 928, and amendments thereto, who receives no wages for such services,
6 or who receives wages which are substantially less than the usual
7 wages paid for such services by comparable employers to employees
8 who are not volunteers, shall be computed on the basis of the dollar
9 amount closest to, but not exceeding, 112½% of the state average
10 weekly wage.

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

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

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

1 *employment is not presumed to be full time employment*

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

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

10 ~~(e)~~(d) Members of a labor union or other association who perform
11 services in behalf of the labor union or other association and who are
12 not paid as full-time employees of the labor union or other association
13 and who are injured or suffer occupational disease in the course of the
14 performance of duties in behalf of the labor union or other association
15 shall recover compensation benefits under the workers compensation
16 act from the labor union or other association if the labor union or other
17 association files an election with the director to bring its members who
18 perform such services under the coverage of the workers compensation
19 act. The average weekly wage for the purpose of this subsection shall
20 be based on what the employee would earn in the employee's general
21 occupation if at the time of the injury the employee had been
22 performing work in the employee's general occupation. The insurance
23 coverage shall be furnished by the labor union or other association.

24 Sec. 15. K.S.A. 44-515 is hereby amended to read as follows: 44-
25 515. (a) After an employee sustains an injury, the employee shall, upon
26 request of the employer, submit to an examination at any reasonable
27 time and place by any one or more reputable health care providers,
28 selected by the employer, and shall so submit to an examination
29 thereafter at intervals during the pendency of such employee's claim for
30 compensation, upon the request of the employer, but the employee shall
31 not be required to submit to an examination oftener than twice in any
32 one month, unless required to do so in accordance with such orders as
33 may be made by the director. *All benefits shall be suspended to an*
34 *employee who refuses to submit to such examination or examinations*
35 *until such time as the employee complies with the employer's request.*
36 *The suspension of benefits shall occur even if the employer is under*
37 *preliminary order to provide such benefits.* Any employee so
38 submitting to an examination or such employee's authorized
39 representative shall upon *written* request be entitled to receive and shall

1 have delivered to such employee a copy of the health care provider's
2 report of such examination within ~~15 days~~ *a reasonable amount of time*
3 after such examination, which report shall be identical to the report
4 submitted to the employer. If the employee is notified to submit to an
5 examination before any health care provider in any town or city other
6 than the residence of the employee at the time that the employee
7 received an injury, the employee shall not be required to submit to an
8 examination until such employee has been furnished with sufficient
9 funds to pay for transportation to and from the place of examination at
10 the rate prescribed for compensation of state officers and employees
11 under K.S.A. 75-3203a, and amendments thereto, for each mile actually
12 and necessarily traveled to and from the place of examination, any
13 turnpike or other tolls and any parking fees actually and necessarily
14 incurred, and in addition the sum of \$15 per day for each *full day* ~~or a~~
15 ~~part thereof~~ that the employee was required to be away from such
16 employee's residence to defray such employee's board and lodging and
17 living expenses. The employee shall not be liable for any fees or charge
18 of any health care provider selected by the employer for making any
19 examination of the employee. The employer or the insurance carrier of
20 the employer of any employee making claim for compensation under
21 the workers compensation act shall be entitled to a copy of the report of
22 any health care provider who has examined or treated the employee in
23 regard to such claim upon written request to the employee or the
24 employee's attorney within ~~15 days~~ *a reasonable amount of time* after
25 such examination or treatment, which report shall be identical to the
26 report submitted to the employee or the employee's attorney.

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

31 (c) Unless a report is furnished as provided in subsection (a) and
32 unless there is a reasonable opportunity thereafter for the health care
33 providers selected by the employee to participate in the examination in
34 the presence of the health care providers selected by the employer, the
35 health care providers selected by the employer or employee shall not be
36 permitted afterwards to give evidence of the condition of the employee
37 at the time such examination was made.

38 (d) Except as provided in this section, there shall be no
39 disqualification or privilege preventing the furnishing of reports by or

1 the testimony of any health care provider who actually makes an
2 examination or treats an injured employee, prior to or after an injury.

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

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

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

27 Sec. 17. K.S.A. 44-520 is hereby amended to read as follows: 44-
28 520. ~~Except as otherwise provided in this section,~~ (a) Proceedings for
29 compensation under the workers compensation act shall not be
30 maintainable unless notice of the accident, ~~stating the time and place~~
31 ~~and particulars thereof, and the name and address of the person injured,~~
32 ~~is given to the employer within 10 days after the date of the accident,~~
33 ~~except that actual knowledge of the accident by the employer or the~~
34 ~~employer's duly authorized agent shall render the giving of such notice~~
35 ~~unnecessary. The ten-day notice provided in this section shall not bar~~
36 ~~any proceeding for compensation under the workers compensation act~~
37 ~~if the claimant shows that a failure to notify under this section was due~~
38 ~~to just cause, except that in no event shall such a proceeding for~~
39 ~~compensation be maintained unless the notice required by this section~~

1 ~~is given to the employer within 75 days after the date of the accident~~
2 ~~unless (a) actual knowledge of the accident by the employer or the~~
3 ~~employer's duly authorized agent renders the giving of such notice~~
4 ~~unnecessary as provided in this section, (b) the employer was~~
5 ~~unavailable to receive such notice as provided in this section, or (c) the~~
6 ~~employee was physically unable to give such notice~~ *injury by accident*
7 *or repetitive trauma is given to the employer: Within 30 calendar days*
8 *of the date of accident or the date of injury by repetitive trauma; within*
9 *10 calendar days after the employee's last day of employment; or*
10 *within 10 calendar days after the employee seeks medical treatment*
11 *specifically for the injury, as defined in subsection (e) of K.S.A. 44-*
12 *510h, and amendments thereto. Notice shall be provided within a time*
13 *period never to exceed 30 calendar days of the date of accident or the*
14 *date of injury by repetitive trauma. Notice may be given orally or in*
15 *writing.*

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

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

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

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

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

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

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

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

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

25 (3) on application for good cause shown.

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

39 (d) Not less than 10 days prior to the first full hearing before an

1 administrative law judge, the administrative law judge shall conduct a
2 prehearing settlement conference for the purpose of obtaining
3 stipulations from the parties, determining the issues and exploring the
4 possibility that the parties may resolve those issues and reach a
5 settlement prior to the first full hearing.

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

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

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

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

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

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

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

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

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

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

36 (2) *In any claim which has not proceeded to regular hearing*
37 *within one year from the date of a preliminary award denying*
38 *compensability of the claim, the employer shall be permitted to file*
39 *with the division an application for dismissal based on lack of*

1 *prosecution. The matter shall be set for hearing with notice to the*
2 *claimant's attorney, if the claimant is represented, or to the claimant's*
3 *last known address. Unless the claimant can prove a good faith reason*
4 *for delay, the claim shall be dismissed with prejudice by the*
5 *administrative law judge. Such dismissal shall be considered a final*
6 *disposition at a full hearing on the claim for purposes of employer*
7 *reimbursement from the fund pursuant to subsection (b) of K.S.A. 44-*
8 *534a, and amendments thereto.*

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

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

24 (b) No award shall be or provide for payment of compensation in a
25 lump sum, except as to such portion of the compensation as shall be
26 found to be due and unpaid at the time of the award, or except at the
27 discretion of the director on settlement agreements, and credit shall be
28 given to the employer in such award for any amount or amounts paid
29 by the employer to the employee as compensation prior to the date of
30 the award.

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

38 Sec. 20. K.S.A. 44-528 is hereby amended to read as follows: 44-
39 528. (a) ~~Any award or modification thereof agreed upon by the parties,~~

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

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

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

36 (d) Any modification of an award under this section on the basis
37 that the functional impairment or work disability of the employee has
38 increased or diminished shall be effective as of the date that the
39 increase or diminishment actually occurred, except that in no event

1 shall the effective date of any such modification be more than six
2 months prior to the date the application was made for review and
3 modification under this section.

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

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

35 (c) *The parties, by agreement and with approval of an*
36 *administrative law judge, may enter into a compromise lump-sum*
37 *settlement in either permanent total or permanent partial disability*
38 *cases which prorates the lump-sum settlement over the life expectancy*
39 *of the injured worker. When such an agreement has been approved,*

1 *neither the weekly compensation rate paid throughout the case nor the*
2 *maximum statutory weekly rate applicable to the injury shall apply. No*
3 *compensation rate shall exceed the maximum statutory weekly rate as*
4 *of the date of the injury. Instead, the prorated rate set forth in the*
5 *approved settlement documents shall control and become the rate for*
6 *that case. This section shall be retroactive in effect.*

7 Sec. 22. K.S.A. 44-532a is hereby amended to read as follows: 44-
8 532a. (a) If an employer has no insurance to secure the payment of
9 compensation *or has insufficiently funded a self-insurance bond*, as
10 provided in subsection (b) (1) *and (2)* of K.S.A. 44-532, and
11 amendments thereto, and such employer is financially unable to pay
12 compensation to an injured worker as required by the workers
13 compensation act, or such employer cannot be located and required to
14 pay such compensation, the injured worker may apply to the director
15 for an award of the compensation benefits, including medical
16 compensation, to which such injured worker is entitled, to be paid from
17 the workers compensation fund. Whenever a worker files an
18 application under this section, the matter shall be assigned to an
19 administrative law judge for hearing. If the administrative law judge is
20 satisfied as to the existence of the conditions prescribed by this section,
21 the administrative law judge may make an award, or modify an existing
22 award, and prescribe the payments to be made from the workers
23 compensation fund as provided in K.S.A. 44-569, and amendments
24 thereto. The award shall be certified to the commissioner of insurance,
25 and upon receipt thereof, the commissioner of insurance shall cause
26 payment to be made to the worker in accordance therewith.

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

33 Sec. 23. K.S.A. 44-534a is hereby amended to read as follows: 44-
34 534a. (a) (1) After an application for a hearing has been filed pursuant
35 to K.S.A. 44-534, and amendments thereto, the employee or the
36 employer may make application for a preliminary hearing, in such form
37 as the director may require, on the issues of the furnishing of medical
38 treatment and the payment of temporary total *or temporary partial*
39 disability compensation. At least seven days prior to filing an

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

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

1 shall not stay the payment of medical compensation and temporary
2 total disability compensation from the date of the preliminary award. If
3 temporary total compensation is awarded, such compensation may be
4 ordered paid from the date of filing the application, except that if the
5 administrative law judge finds from the evidence presented that there
6 were one or more periods of temporary total disability prior to such
7 filing date, temporary total compensation may be ordered paid for all
8 periods of temporary total disability prior to such date of filing. The
9 decision in such preliminary hearing shall be rendered within five days
10 of the conclusion of such hearing. Except as provided in this section, no
11 such preliminary findings or preliminary awards shall be appealable by
12 any party to the proceedings, and the same shall not be binding in a full
13 hearing on the claim, but shall be subject to a full presentation of the
14 facts.

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

37 Sec. 24. K.S.A. 44-536 is hereby amended to read as follows: 44-
38 536. (a) With respect to any and all proceedings in connection with any
39 initial or original claim for compensation, no claim of any attorney for

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

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

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

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

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

7 (4) the fee customarily charged in the locality for similar legal
8 services;

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

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

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

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

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

20 (d) No attorney fees shall be charged in connection with any
21 temporary total disability compensation unless the payment of such
22 compensation in the proper amount is refused, or unless such
23 compensation is terminated by the employer and the payment of such
24 compensation is obtained or reinstated by the efforts of the attorney,
25 whether by agreement, settlement, award or judgment.

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

1 the amount of compensation recovered and paid, which is in excess of
2 the amount of compensation offered to the employee by the employer
3 prior to the execution of a written contract between the employee and
4 the attorney; or (3) 25% of the total amount of compensation recovered
5 and paid as described in subsection (a).

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

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

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

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

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

38 (h) Any and all disputes regarding attorney fees, whether such
39 disputes relate to which of one or more attorneys represents the

1 claimant or claimants or is entitled to the attorney fees, or a division of
2 attorney fees where the claimant or claimants are or have been
3 represented by more than one attorney, or any other disputes
4 concerning attorney fees or contracts for attorney fees, shall be heard
5 and determined by the administrative law judge, after reasonable notice
6 to all interested parties and attorneys.

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

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

26 (b) All testimony introduced and proceedings had in hearings shall
27 be taken down by the certified shorthand reporter, and if an action for
28 review is commenced or if the director, or either party or the best
29 interests of the administration of justice, so instructs, the certified
30 shorthand reporter shall transcribe the certified shorthand reporter's
31 notes of such hearing. If an action for review is commenced, the cost of
32 preparing a transcript shall be paid as provided by K.S.A. 77-620, and
33 amendments thereto. If no action for review is commenced, the cost of
34 preparing a transcript shall be taxed as costs in the case at the discretion
35 of the director in accordance with fair and customary rates charged in
36 the state of Kansas. All official notes of such certified shorthand
37 reporters shall be preserved and filed in the office of the director. Any
38 transcript prepared as above provided and duly certified shall be
39 received as evidence by the board and by any court with the same effect

1 as if the certified shorthand reporter were present and testified to the
2 records so certified.

3 (c) The director or administrative law judge, whoever is
4 conducting the hearing, may make the findings, awards, decisions,
5 rulings or modifications of findings or awards and do all acts at any
6 time without awaiting the transcription of the testimony of the certified
7 shorthand reporter if the director or administrative law judge deems it
8 expedient and advisable to do so.

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

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

15 Sec. 26. K.S.A. 44-5a01 is hereby amended to read as follows: 44-
16 5a01. (a) Where the employer and employee or workman are subject by
17 law or election to the provisions of the workmen's compensation act,
18 the disablement or death of an employee or workman resulting from an
19 occupational disease as defined in this section shall be treated as the
20 happening of an injury by accident, and the employee or workman or,
21 in case of death, his dependents shall be entitled to compensation for
22 such disablement or death resulting from an occupational disease, in
23 accordance with the provisions of the workmen's compensation act as
24 in cases of injuries by accident which are compensable thereunder,
25 except as specifically provided otherwise for occupational diseases. *In*
26 *no circumstances shall an occupational disease be construed to include*
27 *injuries caused by repetitive trauma as defined in K.S.A. 44-508, and*
28 *amendments thereto.*

29 (b) "Occupational disease" shall mean only a disease arising out of
30 and in the course of the employment resulting from the nature of the
31 employment in which the employee was engaged under such employer,
32 and which was actually contracted while so engaged. "Nature of the
33 employment" shall mean, for purposes of this section, that to the
34 occupation, trade or employment in which the employee was engaged,
35 there is attached a particular and peculiar hazard of such disease which
36 distinguishes the employment from other occupations and
37 employments, and which creates a hazard of such disease which is in
38 excess of the hazard of such disease in general. The disease must
39 appear to have had its origin in a special risk of such disease connected

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

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

32 (d) Where an occupational disease is aggravated by any disease or
33 infirmity, not itself compensable, or where disability or death from any
34 other cause, not itself compensable, is aggravated, prolonged,
35 accelerated or in any wise contributed to by an occupational disease,
36 the compensation payable shall be reduced and limited to such
37 proportion only of the compensation that would be payable if the
38 occupational disease were the sole cause of the disability or death, as
39 such occupational disease, as a causative factor, bears to all the causes

1 of such disability or death, such reduction in compensation to be
2 effected by reducing the number of weekly or monthly payments or the
3 amounts of such payments, as under the circumstances of the particular
4 case may be for the best interest of the claimant or claimants.

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

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

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

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

18 Sec. 28. K.S.A. 44-503a, 44-510a, 44-510c, 44-510d, 44-510e, 44-
19 510f, 44-515, 44-516, 44-520, 44-520a, 44-525, 44-528, 44-531, 44-
20 532a, 44-534a, 44-536 and 44-5a01 and K.S.A. 2010 Supp. 44-501, 44-
21 508, 44-510b, 44-510h, 44-510k, 44-511, 44-523, 44-552 and 44-596
22 are hereby repealed.

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