

As Amended by House Committee

{As Amended by Senate Committee of the Whole}

As Amended by Senate Committee

Session of 2013

SENATE BILL No. 187

By Committee on Commerce

2-13

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

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

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

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

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

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

1 *and employment security boards nominating committee* for consideration.

2 ~~(e) There is hereby established the workers compensation~~
3 ~~administrative law judge nominating and review committee which shall be~~
4 ~~composed of two members appointed as follows: The Kansas AFL-CIO~~
5 ~~and the Kansas chamber of commerce and industry shall each select one~~
6 ~~representative to serve on the workers compensation administrative law~~
7 ~~judge nominating and review committee and shall each give written notice~~
8 ~~of such selection to the secretary who shall appoint such selected persons~~
9 ~~to the committee. In the event of a vacancy occurring for any reason on the~~
10 ~~workers compensation administrative law judge nominating and review~~
11 ~~committee, the vacating member shall be replaced by the organization~~
12 ~~which originally selected such member with written notice provided to the~~
13 ~~secretary within 30 days of such vacancy.~~

14 ~~(f) (1) Upon being notified of any vacancy in the position of~~
15 ~~administrative law judge, the administrative law judge nominating and~~
16 ~~review committee shall consider all qualified applicants submitted by the~~
17 ~~director for the vacant position of administrative law judge and nominate a~~
18 ~~person qualified therefor. The administrative law judge nominating and~~
19 ~~review committee shall be required to reach unanimous agreement on any~~
20 ~~nomination to the position of administrative law judge. With respect to~~
21 ~~each person nominated, the secretary either shall accept and appoint the~~
22 ~~person nominated by the administrative law judge nominating and review~~
23 ~~committee to the position of administrative law judge for which the~~
24 ~~nomination was made or shall reject the nomination and request the~~
25 ~~administrative law judge nominating and review committee to nominate~~
26 ~~another person for that position. Upon receipt of any such request for the~~
27 ~~nomination of another person, the administrative law judge nominating~~
28 ~~and review committee shall nominate another person for that position in~~
29 ~~the same manner~~ *There is hereby established the workers compensation*
30 *and employment security boards nominating committee* ~~which.~~ ***Whenever***
31 ***the workers compensation administrative law judge nominating and***
32 ***review committee or the workers compensation board nominating***
33 ***committee, or words of like effect, is referred to or designated by a***
34 ***statute, contract or other document, such reference or designation shall***
35 ***be deemed to apply to the workers compensation and employment***
36 ***security boards nominating committee. The workers compensation and***
37 ***employment security boards nominating committee shall be composed of***
38 ***seven members who are appointed by the governor. Each of the following***
39 ***shall select one member to serve on the nominating committee by giving***
40 ***written notice of the selection to the governor who shall appoint such***
41 ***representatives to the committee:***

42 (1) *The Kansas secretary of labor;*

43 (2) *the Kansas chamber of commerce;*

- 1 (3) *the national federation of independent business;*
- 2 (4) *the Kansas AFL-CIO;*
- 3 (5) *the Kansas state council of the society for human resource*
- 4 *management (KS SHRM);*
- 5 (6) *the Kansas self-insurers association; and*
- 6 (7) *the secretary of labor, who shall select a nominee from either an*
- 7 *employee organization as defined in K.S.A. 75-4322, and amendments*
- 8 *thereto, or a professional employees' organization as defined in K.S.A. 72-*
- 9 *5413, and amendments thereto.*

10 *In the event the governor refuses to appoint a member selected by one*
11 *of the organizations in this subsection, the organization may replace that*
12 *selection with another, subject to the same appointment requirements.*

13 *(f) **{Of the members first appointed to the workers compensation***
14 ***and employment security boards nominating committee, three shall be***
15 ***appointed for terms of two years and four shall be appointed for terms of***
16 ***four years as specified by the governor. Thereafter,}** members of the*
17 *nominating committee shall ~~serve~~ **{be appointed for}** a term of four years.*
18 *Members may not serve more than two consecutive terms.*

19 *(g) In the event of a vacancy on the nominating committee occurring*
20 *for any reason, the respective member whose position becomes vacant*
21 *shall be replaced by the selecting organization by submitting written*
22 *notice of the replacement selection to the governor within 30 days of such*
23 *vacancy. The governor shall either appoint or reject the replacement*
24 *selection as provided in this section.*

25 *(h) The nominating committee shall meet as needed to provide the*
26 *workers compensation and employment security board of review*
27 *appointing authorities with nominees for appointments to the position of:*

- 28 (1) *Workers compensation administrative law judge;*
- 29 (2) *workers compensation appeals board member; and*
- 30 (3) *employment security board of review.*

31 *No action of the committee shall be effective unless approved by two-*
32 *thirds of the committee.*

33 *(i) When notified of a vacancy in the position of workers*
34 *compensation administrative law judge or workers compensation appeals*
35 *board member, the committee shall review all qualified applicants as*
36 *submitted by the director of workers compensation. The committee shall*
37 *nominate a qualified person to fill the vacancy and submit that nomination*
38 *to the secretary of labor. The secretary shall either accept and appoint the*
39 *person nominated by the nominating committee to the position for which*
40 *the nomination was made or reject the nomination and request the*
41 *nominating committee to nominate another person for that position. Upon*
42 *receipt of any such request for the nomination of another person, the*
43 *nominating committee shall nominate another person for that position in*

1 *the same manner as set forth above.*

2 ~~(2)(j)~~ (1) Each administrative law judge shall hold office for a term of
3 four years and may be reappointed. Each administrative law judge shall
4 continue to serve for the term of the appointment or until a successor is
5 appointed. ~~Successors to such administrative law judge positions shall be~~
6 ~~appointed for terms of four years~~ *An administrative law judge who wishes*
7 *to be considered for reappointment shall be deemed to have met the*
8 *qualification requirements for appointment as administrative law judge. If*
9 *such administrative law judge wishes to be considered for reappointment*
10 *by the nominating committee, such administrative law judge shall submit*
11 *an application as provided in subsection (d) no sooner than 150 days*
12 *before and no later than 90 days prior to the expiration of such judge's*
13 *term. Within sixty days prior to the expiration of the term of the*
14 *administrative law judge seeking reappointment, the nominating*
15 *committee described above shall meet to vote on reappointment of the*
16 *administrative law judge. The administrative law judge shall be submitted*
17 *to the secretary for reappointment unless $\frac{2}{3}$ of the nominating committee*
18 *votes not to submit the administrative law judge for reappointment.*

19 ~~(3)~~ (2) If a vacancy should occur in the position of an administrative
20 law judge during the term of an administrative law judge, ~~the~~
21 ~~administrative law judge nominating and review committee~~ *the*
22 *nominating committee* shall nominate an individual from the qualified
23 applicants submitted by the director to complete the remainder of the
24 unexpired portion of the term.

25 ~~(g)~~(k) Except as otherwise provided in this subsection, administrative
26 law judges appointed on and after July 1, 2006, shall serve a term of office
27 of four years. Administrative law judges hired before July 1, 2006, may
28 continue as administrative law judges under the classified service under
29 the Kansas civil service act at the salary provided under the civil service
30 act or may elect to be appointed to a term and receive the annual salary
31 equal to ~~75%~~ **85%** of the salary prescribed for a district judge if the
32 currently employed administrative law judge within 60 days of the
33 effective date of this section notifies the director in writing that the
34 administrative law judge elects to serve an appointed term of office rather
35 than continuing in the classified service. The term of office for an
36 administrative law judge who elects a term of office shall begin on the date
37 the written election is received by the director and the first term of office
38 for such person shall be for two, three or four years as specified by the
39 secretary so that administrative law judges appointed under this subsection
40 serve staggered terms. Thereafter, any such person if reappointed as an
41 administrative law judge shall be appointed for a term of four years.

42 ~~(h)~~ ~~Following the completion of a term, an administrative law judge~~
43 ~~who wishes to be considered for reappointment to such judge's position~~

1 shall be deemed to have met the qualification requirements for
2 appointment as administrative law judge and shall be considered for
3 renomination by the workers compensation administrative law judge
4 nominating and review committee.

5 ~~(i)~~(l) (1) Administrative law judges shall have power to administer
6 oaths, certify official acts, take depositions, issue subpoenas, compel the
7 attendance of witnesses and the production of books, accounts, papers,
8 documents and records to the same extent as is conferred on the district
9 courts of this state, and may conduct an investigation, inquiry or hearing
10 on all matters before the administrative law judges. All final orders,
11 awards, modifications of awards, or preliminary awards under K.S.A. 44-
12 534a, and amendments thereto, made by an administrative law judge shall
13 be subject to review by the **workers compensation appeals** board upon
14 written request of any interested party within 10 days. Intermediate
15 Saturdays, Sundays and legal holidays shall be excluded in the time
16 computation. Review by the board shall be a prerequisite to judicial review
17 as provided for in K.S.A. 44-556, and amendments thereto. On any such
18 review, the board shall have authority to grant or refuse compensation, or
19 to increase or diminish any award of compensation or to remand any
20 matter to the administrative law judge for further proceedings. The orders
21 of the board under this subsection shall be issued within 30 days from the
22 date arguments were presented by the parties.

23 (2) (A) If an administrative law judge has entered a preliminary
24 award under K.S.A. 44-534a, and amendments thereto, a review by the
25 board shall not be conducted under this section unless it is alleged that the
26 administrative law judge exceeded the administrative law judge's
27 jurisdiction in granting or denying the relief requested at the preliminary
28 hearing. Such an appeal from a preliminary award may be heard and
29 decided by a single member of the board. Members of the board shall hear
30 such preliminary appeals on a rotating basis and the individual board
31 member who decides the appeal shall sign each such decision. The orders
32 of the board under this subsection shall be issued within 30 days from the
33 date arguments were presented by the parties.

34 (B) If an order on review is not issued by the board within the
35 applicable time period prescribed by subsection ~~(i)(1)~~ **(l)(1)**, medical
36 compensation and any disability compensation as provided in the award of
37 the administrative law judge shall be paid commencing with the first day
38 after such time period and shall continue to be paid until the order of the
39 board is issued, except that no payments shall be made under this
40 provision for any period before the first day after such time period.
41 Nothing in this section shall be construed to limit or restrict any other
42 remedies available to any party to a claim under any other statute.

43 (C) In any case in which the final award of an administrative law

1 judge is appealed to the board for review under this section and in which
2 the compensability is not an issue to be decided on review by the board,
3 medical compensation shall be payable in accordance with the award of
4 the administrative law judge and shall not be stayed pending such review.
5 The employee may proceed under K.S.A. 44-510k, and amendments
6 thereto, and may have a hearing in accordance with that statute to enforce
7 the provisions of this subsection.

8 ~~(j)~~(m) Each assistant director and each administrative law judge or
9 special administrative law judge shall be allowed all reasonable and
10 necessary expenses actually incurred while in the actual discharge of
11 official duties in administering the workers compensation act, but such
12 expenses shall be sworn to by the person incurring the same and be
13 approved by the secretary.

14 ~~(k)~~(n) In case of emergency the director may appoint special local
15 administrative law judges and assign to them the examination and hearing
16 of any designated case or cases. Such special local administrative law
17 judges shall be attorneys and admitted to practice law in the state of
18 Kansas and shall, as to all cases assigned to them, exercise the same
19 powers as provided by this section for the regular administrative law
20 judges. Special local administrative law judges shall receive a fee
21 commensurate with the services rendered as fixed by rules and regulations
22 adopted by the director. The fees prescribed by this section prior to the
23 effective date of this act shall be effective until different fees are fixed by
24 such rules and regulations.

25 ~~(l)~~(o) All special local administrative law judge's fees and expenses,
26 with the exception of settlement hearings, shall be paid from the workers
27 compensation administration fee fund, as provided in K.S.A. 74-712, and
28 amendments thereto. Where there are no available funds or where the
29 special local administrative law judge conducted a settlement hearing, the
30 fees shall be taxed as costs in each case heard by such special local
31 administrative law judge and when collected shall be paid directly to such
32 special local administrative law judge by the party charged with the
33 payment of the same.

34 ~~(m)~~(p) Except as provided for judicial review under K.S.A. 44-556,
35 and amendments thereto, the decisions and awards of the board shall be
36 final.

37 Sec. 2. K.S.A. 2012 Supp. 44-555c is hereby amended to read as
38 follows: 44-555c. (a) There is hereby established the workers
39 compensation *appeals* board. ***Whenever the workers compensation***
40 ***board, or words of like effect, is referred to or designated by a statute,***
41 ***contract or other document, such reference or designation shall be***
42 ***deemed to apply to the workers compensation appeals board.*** The board
43 shall have exclusive jurisdiction to review all decisions, findings, orders

1 and awards of compensation of administrative law judges under the
2 workers compensation act. The review by the *appeals* board shall be upon
3 questions of law and fact as presented and shown by a transcript of the
4 evidence and the proceedings as presented, had and introduced before the
5 administrative law judge. The *appeals* board shall be within the division of
6 workers compensation of the department of labor and all budgeting,
7 personnel, purchasing and related management functions of the board shall
8 be administered under the supervision and direction of the secretary of
9 labor. The *appeals* board shall consist of five members who shall be
10 appointed by the secretary in accordance with this section and who shall
11 each serve for a term of four years, ~~except as provided for the first~~
12 ~~members appointed to the board under subsection (f).~~

13 (b) Each board member shall be an attorney regularly admitted to
14 practice law in Kansas for a period of at least seven years *with at least five*
15 *years experience practicing law in the area of workers compensation* and
16 shall have engaged in the active practice of law during such period as a
17 lawyer, judge of a court of record or any court in Kansas or a full-time
18 teacher of law in an accredited law school, or any combination of such
19 types of practice.

20 (c) Each board member shall receive an annual salary in an amount
21 equal to the salary prescribed by law for a district judge, except that the
22 member who is the chairperson of the workers compensation board shall
23 receive an annual salary in an amount equal to the salary prescribed for a
24 district judge designated as chief judge of a district court of Kansas. The
25 board members shall devote full time to the duties of such office and shall
26 not engage in the private practice of law during their term of office. No
27 board member may receive additional compensation for official services
28 performed by the board member. Each board member shall be reimbursed
29 for expenses incurred in the performance of such official duties under the
30 same circumstances and to the same extent as judges of the district court
31 are reimbursed for such expenses.

32 (d) Applications for membership on the board shall be submitted to
33 the director of workers compensation. The director shall determine if an
34 applicant meets the qualifications for membership on the board prescribed
35 in subsection (b). Qualified applicants for the board will be submitted by
36 the director to the workers compensation ~~board~~ **and employment security**
37 **boards** nominating committee for consideration.

38 (e) ~~There is hereby established the workers compensation board~~
39 ~~nominating committee which shall be composed of two members~~
40 ~~appointed as follows: The Kansas AFL-CIO and the Kansas chamber of~~
41 ~~commerce and industry shall each select one representative to serve on the~~
42 ~~workers compensation board nominating committee and shall give written~~
43 ~~notice of the selection to the secretary who shall appoint such~~

1 representatives to the committee. In the event of a vacancy occurring for
2 any reason on the nominating committee, the respective member shall be
3 replaced by the appointing organization with written notice of the
4 appointment to the secretary of labor within 30 days of such vacancy.

5 ~~(f) (1) Upon being notified of any vacancy on the board or of the~~
6 ~~need to appoint a member pro tem under subsection (i), the nominating~~
7 ~~committee shall consider all qualified applicants submitted by the director~~
8 ~~for the vacant position on the board or the member pro tem position and~~
9 ~~nominate a person qualified therefor. The nominating committee shall be~~
10 ~~required to reach unanimous agreement on any nomination to the board.~~
11 ~~With respect to each person nominated, the secretary either shall accept~~
12 ~~and appoint the person nominated by the nominating committee to the~~
13 ~~position on the board for which the nomination was made or shall reject~~
14 ~~the nomination and request the nominating committee to nominate another~~
15 ~~person for that position. Upon receipt of any such request for the~~
16 ~~nomination of another person, the nominating committee shall nominate~~
17 ~~another person for that position in the same manner.~~

18 ~~(2) The first members of the board established by this section are~~
19 ~~hereby appointed as follows: Each person who was a member of the~~
20 ~~workers compensation board which was in existence on January 12, 1995,~~
21 ~~is hereby appointed, effective January 13, 1995, as a member of the board~~
22 ~~established by this section. The term of office of each person so appointed~~
23 ~~as a member of the board established by this section is for the period equal~~
24 ~~to the remainder of the term of office such person had as of January 12,~~
25 ~~1995, as a member of the workers compensation board which was in~~
26 ~~existence on January 12, 1995.~~

27 ~~(3) Each member of the board shall hold office for the term of the~~
28 ~~appointment and until the successor shall have been appointed. Successors~~
29 ~~to such members shall be appointed for terms of four years.~~

30 ~~(4) If a vacancy should occur on the board during the term of a~~
31 ~~member, the nominating committee shall nominate an individual from the~~
32 ~~qualified applicants submitted by the director to complete the remainder of~~
33 ~~the unexpired portion of the term. With respect to each person so~~
34 ~~nominated, the secretary either shall accept and appoint the person~~
35 ~~nominated to the board or shall reject the nomination and request the~~
36 ~~nominating committee to nominate another person for the position. Upon~~
37 ~~receipt of any such request for the nomination of another person, the~~
38 ~~nominating committee shall nominate another person for the position in~~
39 ~~the same manner.~~

40 ~~(g) Following the completion of a term, board members who wish to~~
41 ~~be considered for reappointment to the board shall be deemed to have met~~
42 ~~the qualification requirements for selection to the board and shall be~~
43 ~~considered for renomination by the workers compensation board~~

1 ~~nominating committee.~~

2 (f) *A board member who wishes to be considered for reappointment*
3 *shall be deemed to have met the qualification requirements for*
4 *appointment as a board member. If a board member wishes to be*
5 *considered for reappointment by the **workers compensation and***
6 ***employment security boards** nominating committee, such board member*
7 *shall submit an application as provided in subsection (d) no sooner than*
8 *150 days before and no later than 90 days prior to the expiration of such*
9 *member's term. No later than thirty days prior to the expiration of the*
10 *term, the nominating committee shall convene to vote on the*
11 *reappointment of the board member. The board member shall be submitted*
12 *to the secretary for reappointment unless $\frac{2}{3}$ of the nominating committee*
13 *votes not to submit the board member's name for reappointment.*

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

16 ~~(h)~~(h) If illness or other temporary disability of a member of the board
17 will not permit the member to serve during a case or in any case in which a
18 member of the board must be excused from serving because of a conflict
19 or is otherwise disqualified with regard to such case, the director shall
20 ~~notify the workers compensation nominating committee of the need to~~
21 ~~appoint a member pro tem. Upon receipt of such notice, the committee~~
22 ~~shall act as soon as possible and nominate a qualified person to serve as~~
23 ~~member pro tem in such case in accordance with subsection (f). Each~~
24 ~~member pro tem shall receive compensation at the same rate as a member~~
25 ~~of the board receives, prorated for the hours of actual service as a member~~
26 ~~pro tem and shall receive expenses under the same circumstances and to~~
27 ~~the same extent as a member of the board receives. Each member pro tem~~
28 ~~shall have all the powers, duties and functions of a member of the board~~
29 ~~with regard to the case.~~

30 (j) The board shall maintain principal offices in Topeka, Kansas, and
31 the board may conduct hearings at a courthouse of any county in Kansas or
32 at another location specified by the board. The secretary of labor shall
33 provide a courtroom and other suitable quarters in Topeka, Kansas, for the
34 use of the board and its staff. When the board conducts hearings at any
35 location other than in Topeka, Kansas, the director shall make suitable
36 arrangements for such hearings. Subject to the provisions of appropriation
37 acts, the director shall provide such supplies and equipment and shall
38 appoint such support personnel as may be necessary for the board to fulfill
39 the duties imposed by this act, subject to approval by the secretary.

40 (k) For purposes of hearing cases, the board may sit together or in
41 panels of ~~two~~ ~~three~~ ~~two~~ members or more, designated by the chairperson
42 of the board, except that an appeal from a preliminary award entered under
43 K.S.A. 44-534a, and amendments thereto, may be heard by a panel of one

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

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

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

1 secretary to make a determination on the claim after the investigation as
2 the special examiner deems necessary. The parties shall be promptly
3 notified of the special examiner's decision and any party aggrieved by the
4 decision may appeal to the referee as provided in subsection (c). The
5 claimant and the claimant's most recent employing unit shall be promptly
6 notified of the examiner's or special examiner's decision.

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

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

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

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

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

39 (f) *Board of review*. (1) There is hereby created ~~a~~ **an employment**
40 **security** board of review, hereinafter referred to as the board, consisting of
41 three members. ~~Except as provided by paragraph (2) of this subsection,~~
42 Each member of the board shall be appointed for a term of four years as
43 provided in this subsection. ~~Two members shall be appointed by the~~

1 governor, subject to confirmation by the senate as provided in K.S.A. 75-
2 4315b, and amendments thereto. Except as provided by K.S.A. 46-2601,
3 and amendments thereto, no person appointed to the board, whose
4 appointment is subject to confirmation by the senate, shall exercise any
5 power, duty or function as a member until confirmed by the senate. One
6 member shall be representative of employees, one member shall be
7 representative of employers, and one member shall be representative of the
8 public in general. The appointment of the employee representative member
9 of the board shall be made by the governor from a list of three nominations
10 submitted by the Kansas A.F.L.-C.I.O. The appointment of the employer
11 representative member of the board shall be made by the governor from a
12 list of three nominations submitted by the Kansas chamber of commerce
13 and industry. The appointment of the public representative member of the
14 board, who, because of vocation, occupation or affiliation may be deemed
15 not to be representative of either management or labor, shall be made by
16 the members appointed by the governor as employee representative and
17 employer representative. If the two members do not agree and fail to make
18 the appointment of the public member within 30 days after the expiration
19 of the public member's term of office, the governor shall appoint the
20 representative of the public. Not more than two members of the board shall
21 belong to the same political party.

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

41 (3) No ~~board~~ member of the **employment security board of review**
42 shall serve more than two consecutive terms.

43 (3)(4) Each member of the **employment security** board shall serve

1 until a successor has been appointed and confirmed. Any vacancy in the
2 membership of the board occurring prior to expiration of a term shall be
3 filled by appointment for the unexpired term in the same manner as
4 provided for original appointment of the member. ~~Each member shall be~~
5 ~~appointed as representative of the same special interest group represented~~
6 ~~by the predecessor of the member.~~

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

14 (5)(6) The board **employment security board of review** shall
15 organize annually by the election of a chairperson from among its
16 members. The chairperson shall serve in that capacity for a term of one
17 year and until a successor is elected. The board shall meet on the first
18 Monday of each month or on the call of the chairperson or any two
19 members of the board at the place designated. The secretary of labor shall
20 appoint an executive secretary of the board and the executive secretary
21 shall attend the meetings of the board.

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

33 (7)(8) Two members of the board **employment security board of**
34 **review** shall constitute a quorum and no action of the board shall be valid
35 unless it has the concurrence of at least two members. A vacancy on the
36 board shall not impair the right of a quorum to exercise all the rights and
37 perform all the duties of the board.

38 (g) *Procedure.* The manner in which disputed claims are presented,
39 the reports on claims required from the claimant and from employers and
40 the conduct of hearings and appeals shall be in accordance with rules of
41 procedure prescribed by the board **employment security board of review**
42 for determining the rights of the parties, whether or not such rules conform
43 to common law or statutory rules of evidence and other technical rules of

1 procedure. A full and complete record shall be kept of all proceedings and
2 decisions in connection with a disputed claim. All testimony at any hearing
3 upon a disputed claim shall be recorded, but need not be transcribed unless
4 the disputed claim is further appealed. In the performance of its official
5 duties, the board shall have access to all of the records which pertain to the
6 disputed claim and are in the custody of the secretary of labor and shall
7 receive the assistance of the secretary upon request.

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

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

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

32 (k) In any proceeding or hearing conducted under this section, a party
33 to the proceeding or hearing may appear before a referee or the ~~board~~
34 **employment security board of review** either personally or by means of a
35 designated representative to present evidence and to state the position of
36 the party. Hearings may be conducted in person, by telephone or other
37 means of electronic communication. The hearing shall be conducted by
38 telephone or other means of electronic communication if none of the
39 parties requests an in-person hearing. If only one party requests an in-
40 person hearing, the referee shall have the discretion of requiring all parties
41 to appear in person or allow the party not requesting an in-person hearing
42 to appear by telephone or other means of electronic communication. The
43 notice of hearing shall include notice to the parties of their right to request

1 an in-person hearing and instructions on how to make the request.

2 **Sec. 4. K.S.A. 2012 Supp. 44-508 is hereby amended to read as**
3 **follows: 44-508. As used in the workers compensation act:**

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

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

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

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

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

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

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

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

43 (C) any other child who is actually dependent in whole or in part

1 on the employee and who is related to the employee by marriage or
2 consanguinity; or

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

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

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

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

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

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

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

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

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

38 (f) (1) "Personal injury" and "injury" mean any lesion or change
39 in the physical structure of the body, causing damage or harm thereto.
40 Personal injury or injury may occur only by accident, repetitive
41 trauma or occupational disease as those terms are defined.

42 (2) An injury is compensable only if it arises out of and in the
43 course of employment. An injury is not compensable because work

1 was a triggering or precipitating factor. An injury is not compensable
2 solely because it aggravates, accelerates or exacerbates a preexisting
3 condition or renders a preexisting condition symptomatic.

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

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

9 (ii) the increased risk or hazard to which the employment
10 exposed the worker is the prevailing factor in causing the repetitive
11 trauma; and

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

14 (B) An injury by accident shall be deemed to arise out of
15 employment only if:

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

19 (ii) the accident is the prevailing factor causing the injury,
20 medical condition, and resulting disability or impairment.

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

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

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

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

30 (iv) accident or injury which arose either directly or indirectly
31 from idiopathic causes.

32 (B) The words "arising out of and in the course of employment"
33 as used in the workers compensation act shall not be construed to
34 include injuries to the employee occurring while the employee is on
35 the way to assume the duties of employment or after leaving such
36 duties, the proximate cause of which injury is not the employer's
37 negligence. An employee shall not be construed as being on the way to
38 assume the duties of employment or having left such duties at a time
39 when the worker is on the premises owned or under the exclusive
40 control of the employer or on the only available route to or from work
41 which is a route involving a special risk or hazard connected with the
42 nature of the employment that is not a risk or hazard to which the
43 general public is exposed and which is a route not used by the public

1 except in dealings with the employer. An employee shall not be
2 construed as being on the way to assume the duties of employment, if
3 the employee is a provider of emergency services responding to an
4 emergency.

5 (C) The words, "arising out of and in the course of employment"
6 as used in the workers compensation act shall not be construed to
7 include injuries to employees while engaged in recreational or social
8 events under circumstances where the employee was under no duty to
9 attend and where the injury did not result from the performance of
10 tasks related to the employee's normal job duties or as specifically
11 instructed to be performed by the employer.

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

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

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

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

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

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

38 (m) "Community service work" means: (1) Public or community
39 service performed as a result of a contract of diversion or of
40 assignment to a community corrections program or conservation
41 camp or suspension of sentence or as a condition of probation or in
42 lieu of a fine imposed by court order; or (2) public or community
43 service or other work performed as a requirement for receipt of any

1 kind of public assistance in accordance with any program
2 administered by the secretary of social and rehabilitation services.

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

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

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

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

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

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

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

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

1 is contained therein.

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

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

11 Sec. 5. K.S.A. 44-510j is hereby amended to read as follows: 44-
12 510j. When an employer's insurance carrier or a self-insured
13 employer disputes all or a portion of a bill for services rendered for
14 the care and treatment of an employee under this act, the following
15 procedures apply:

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

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

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

36 (b) The application for informal hearing shall include copies of
37 the disputed bills, all correspondence concerning the bills and any
38 additional written information the party deems appropriate. When
39 anyone applies for an informal hearing before the director, copies of
40 the application shall be sent to all parties to the dispute and the
41 employee. Within 20 days of receiving the application for informal
42 hearing, the other parties to the dispute shall send any additional
43 written information deemed relevant to the dispute to the director.

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

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

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

31 (2) The formal hearing shall be conducted by hearing officers, the
32 medical administrator or both as appointed by the director. During
33 the formal hearing parties to the dispute shall have the right to appear
34 or be represented and may produce witnesses, including expert
35 witnesses, and such other relevant evidence as may be otherwise
36 allowed under the workers compensation act. If the director finds that
37 a provider or facility has made excessive charges or provided or
38 ordered unjustified treatment, services, hospitalization or visits, the
39 provider or facility may, subject to the director's order, receive
40 payment pursuant to this section from the carrier, employer or
41 employee for the excessive fees or unjustified treatment, services,
42 hospitalization or visits and such provider may be ordered to repay
43 any fees or charges collected therefor. If it is determined after the

1 formal hearing that a provider improperly utilized or otherwise
2 rendered or ordered unjustified treatment or services or that the fees
3 for such treatment or services were excessive, the director may
4 provide a report to the licensing board of the service provider with full
5 documentation of any such determination, except that no such report
6 shall be provided until after judicial review if the order is appealed.
7 Any decision rendered under this section may be reviewed by the
8 workers compensation *appeals* board. A party must file a notice of
9 appeal within 10 days of the issuance of any decision under this
10 section. The record on appeal shall be limited only to the evidence
11 presented to the hearing officer. The decision of the director shall be
12 affirmed unless the board determines that the decision was not
13 supported by substantial competent evidence.

14 (e) By accepting payment pursuant to this section for treatment
15 or services rendered to an injured employee, the provider shall be
16 deemed to consent to submitting all necessary records to substantiate
17 the nature and necessity of the service or charge and other
18 information concerning such treatment to utilization review under this
19 section. Such health care provider shall comply with any decision of
20 the director pursuant to this section.

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

42 (g) A provider may not improperly overcharge or charge for
43 services which were not provided for the purpose of obtaining

1 additional payment. Any dispute regarding such actions shall be
2 resolved in the same manner as other bill disputes as provided by this
3 section. Any violation of the provisions of this section or K.S.A. 44-
4 510i, and amendments thereto, which is willful or which demonstrates
5 a pattern of improperly charging or overcharging for services
6 rendered pursuant to this act constitutes grounds for the director to
7 impose a civil fine not to exceed \$5,000. Any civil fine imposed under
8 this section shall be subject to review by the board. All moneys
9 received for civil fines imposed under this section shall be deposited in
10 the state treasury to the credit of the workers compensation fund.

11 (h) Any health care provider, nurse, physical therapist, any entity
12 providing medical, physical or vocational rehabilitation services or
13 providing reeducation or training pursuant to K.S.A. 44-510g, and
14 amendments thereto, medical supply establishment, surgical supply
15 establishment, ambulance service or hospital which accept the terms
16 of the workers compensation act by providing services or material
17 thereunder shall be bound by the fees approved by the director and no
18 injured employee or dependent of a deceased employee shall be liable
19 for any charges above the amounts approved by the director. If the
20 employer has knowledge of the injury and refuses or neglects to
21 reasonably provide the services of a health care provider required by
22 this act, the employee may provide the same for such employee, and
23 the employer shall be liable for such expenses subject to the
24 regulations adopted by the director. No action shall be filed in any
25 court by a health care provider or other provider of services under
26 this act for the payment of an amount for medical services or
27 materials provided under the workers compensation act and no other
28 action to obtain or attempt to obtain or collect such payment shall be
29 taken by a health care provider or other provider of services under
30 this act, including employing any collection service, until after final
31 adjudication of any claim for compensation for which an application
32 for hearing is filed with the director under K.S.A. 44-534, and
33 amendments thereto. In the case of any such action filed in a court
34 prior to the date an application is filed under K.S.A. 44-534, and
35 amendments thereto, no judgment may be entered in any such cause
36 and the action shall be stayed until after the final adjudication of the
37 claim. In the case of an action stayed hereunder, any award of
38 compensation shall require any amounts payable for medical services
39 or materials to be paid directly to the provider thereof plus an amount
40 of interest at the rate provided by statute for judgments. No period of
41 time under any statute of limitation, which applies to a cause of action
42 barred under this subsection, shall commence or continue to run until
43 final adjudication of the claim under the workers compensation act.

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

8 Sec. 6. K.S.A. 2012 Supp. 75-5708 is hereby amended to read as
9 follows: 75-5708. (a) There is hereby established within and as a part
10 of the department of labor a division of workers compensation. The
11 division shall be administered, under the supervision of the secretary
12 of labor, by the director of workers compensation, who shall be the
13 chief administrative officer of the division. The director of workers
14 compensation shall be appointed by the secretary of labor and shall
15 serve at the pleasure of the secretary. The director shall be in the
16 unclassified service under the Kansas civil service act and shall receive
17 an annual salary fixed by the secretary of labor, with the approval of
18 the governor. The director of workers compensation shall be an
19 attorney admitted to practice law in the state of Kansas. The director
20 shall devote full time to the duties of such office and shall not engage
21 in the private practice of law during the director's term of office.

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

38 (c) Assistant directors shall be selected by the director of workers
39 compensation, with the approval of the secretary of labor. Except as
40 otherwise provided under K.S.A. 44-551, and amendments thereto, on
41 and after July 1, 2006 2013, administrative law judges shall be selected
42 by the ~~administrative law judge nominating and review~~ *workers*
43 *compensation and employment security boards nominating committee*

1 **and appointed by the secretary of labor. Each assistant director and**
2 **administrative law judge shall be subject to either dismissal or**
3 **suspension of up to 30 days for any of the following:**

4 **(1) Failure to conduct oneself in a manner appropriate to the**
5 **appointee's professional capacity;**

6 **(2) failure to perform duties as required by the workers**
7 **compensation act; or**

8 **(3) any reason set out for dismissal or suspension in the Kansas**
9 **civil service act or rules and regulations adopted pursuant thereto.**

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

12 **Sec. ~~4~~ 7. K.S.A. 44-510j and K.S.A. 2012 Supp. 44-508, 44-551,**
13 **44-555c and ~~44-709~~, 44-709 and 75-5708 are hereby repealed.**

14 **Sec. ~~5~~ 8. This act shall take effect and be in force from and after its**
15 **publication in the statute book.**