

SENATE BILL No. 73

By Committee on Commerce

1-24

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

8
9 *Be it enacted by the Legislature of the State of Kansas:*

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

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

33 (c) Notwithstanding the provisions of K.S.A. 44-575, and
34 amendments thereto, if the state fair board enters into a contract for the
35 purchase of workers compensation insurance as described in subsection
36 (a), the state workers compensation self-insurance fund shall not be liable

1 for any compensation claims under the workers compensation act relating
2 to the state fair board and arising during the term of such contract, or for
3 any other amounts otherwise required to be paid under the workers
4 compensation act during the term of such contract.

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

8 Sec. 2. K.S.A. 2012 Supp. 44-510d is hereby amended to read as
9 follows: 44-510d. (a) Where disability, partial in character but permanent
10 in quality, results from the injury, the injured employee shall be entitled to
11 the compensation provided in K.S.A. 44-510h and 44-510i, and
12 amendments thereto. The injured employee may be entitled to payment of
13 temporary total disability as defined in K.S.A. 44-510c, and amendments
14 thereto, or temporary partial disability as defined in subsection (a)(1) of
15 K.S.A. 44-510e, and amendments thereto, provided that the injured
16 employee shall not be entitled to any other or further compensation for or
17 during the first week following the injury unless such disability exists for
18 three consecutive weeks, in which event compensation shall be paid for
19 the first week. Thereafter compensation shall be paid for temporary total or
20 temporary partial disability as provided in the following schedule, $66\frac{2}{3}\%$
21 of the average weekly wages to be computed as provided in K.S.A. 44-
22 511, and amendments thereto, except that in no case shall the weekly
23 compensation be more than the maximum as provided for in K.S.A. 44-
24 510c, and amendments thereto.

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

- 29 (1) For loss of a thumb, 60 weeks.
30 (2) For the loss of a first finger, commonly called the index finger, 37
31 weeks.
32 (3) For the loss of a second finger, 30 weeks.
33 (4) For the loss of a third finger, 20 weeks.
34 (5) For the loss of a fourth finger, commonly called the little finger,
35 15 weeks.

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

- 1 includes the loss of any part of the bone of such second phalange, shall be
2 considered to be equal to the loss of the entire thumb. The loss of the first
3 and second phalanges and any part of the third proximal phalange of any
4 finger, shall be considered as the loss of the entire finger. Amputation
5 through the joint shall be considered a loss to the next higher schedule.
- 6 (7) For the loss of a great toe, 30 weeks.
- 7 (8) For the loss of any toe other than the great toe, 10 weeks.
- 8 (9) The loss of the first phalange of any toe shall be considered to be
9 equal to the loss of $\frac{1}{2}$ of such toe and the compensation shall be $\frac{1}{2}$ of the
10 amount above specified.
- 11 (10) The loss of more than one phalange of a toe shall be considered
12 to be equal to the loss of the entire toe.
- 13 (11) For the loss of a hand, 150 weeks.
- 14 (12) For the loss of a forearm, 200 weeks.
- 15 (13) For the loss of an arm, excluding the shoulder joint, shoulder
16 girdle, shoulder musculature or any other shoulder structures, 210 weeks,
17 and for the loss of an arm, including the shoulder joint, shoulder girdle,
18 shoulder musculature or any other shoulder structures, 225 weeks.
- 19 (14) For the loss of a foot, 125 weeks.
- 20 (15) For the loss of a lower leg, 190 weeks.
- 21 (16) For the loss of a leg, 200 weeks.
- 22 (17) For the loss of an eye, or the complete loss of the sight thereof,
23 120 weeks.
- 24 (18) Amputation or severance below the wrist shall be considered as
25 the loss of a hand. Amputation at the wrist and below the elbow shall be
26 considered as the loss of the forearm. Amputation at or above the elbow
27 shall be considered loss of the arm. Amputation below the ankle shall be
28 considered loss of the foot. Amputation at the ankle and below the knee
29 shall be considered as loss of the lower leg. Amputation at or above the
30 knee shall be considered as loss of the leg.
- 31 (19) For the complete loss of hearing of both ears, 110 weeks.
- 32 (20) For the complete loss of hearing of one ear, 30 weeks.
- 33 (21) Permanent loss of the use of a finger, thumb, hand, shoulder,
34 arm, forearm, toe, foot, leg or lower leg or the permanent loss of the sight
35 of an eye or the hearing of an ear, shall be equivalent to the loss thereof.
36 For the permanent partial loss of the use of a finger, thumb, hand,
37 shoulder, arm, toe, foot or leg, or the sight of an eye or the hearing of an
38 ear, compensation shall be paid as provided for in K.S.A. 44-510c, and
39 amendments thereto, per week during that proportion of the number of
40 weeks in the foregoing schedule provided for the loss of such finger,
41 thumb, hand, shoulder, arm, toe, foot or leg or the sight of an eye or the
42 hearing of an ear, which partial loss thereof bears to the total loss of a
43 finger, thumb, hand, shoulder, arm, toe, foot or leg, or the sight of an eye

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

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

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

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

36 (c) Whenever the employee is entitled to compensation for a specific
37 injury under the foregoing schedule, the same shall be exclusive of all
38 other compensation except the benefits provided in K.S.A. 44-510h and
39 44-510i, and amendments thereto, and no additional compensation shall be
40 allowable or payable for any temporary or permanent, partial or total
41 disability, except that the director, in proper cases, may allow additional
42 compensation during the actual healing period, following amputation. The
43 healing period shall not be more than 10% of the total period allowed for

1 the scheduled injury in question nor in any event for longer than 15 weeks.
2 The return of the employee to the employee's usual occupation shall
3 terminate the healing period.

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

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

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

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

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

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

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

43 (i) The loss of or loss of use of a shoulder, arm, forearm or hand of

1 one upper extremity, combined with the loss of or loss of use of a shoulder,
2 arm, forearm or hand of the other upper extremity;

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

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

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

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

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

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

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

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

42 (E) "Wage loss" shall mean the difference between the average
43 weekly wage the employee was earning at the time of the injury and the

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

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

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

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

28 (F) The amount of compensation for whole body injury under this
29 section shall be determined by multiplying the payment rate by the weeks
30 payable. As used in this section: (1) The payment rate shall be the lesser
31 of: (A) The amount determined by multiplying the average weekly wage
32 of the worker prior to such injury by $66\frac{2}{3}\%$; or (B) the maximum provided
33 in K.S.A. 44-510c, and amendments thereto; (2) weeks payable shall be
34 determined as follows: (A) Determine the weeks of temporary
35 compensation paid by adding the amounts of temporary total and
36 temporary partial disability compensation paid and dividing the sum by the
37 payment rate above; (B) subtract from 415 weeks the total number of
38 weeks of temporary compensation paid as determined in (F)(2)(A),
39 excluding the first 15 such weeks; and (3) multiply the number of weeks
40 as determined in (F)(2)(B) by the percentage of functional impairment
41 pursuant to subsection (a)(2)(B) or the percentage of work disability
42 pursuant to subsection (a)(2)(C), whichever is applicable.

43 (3) When an injured worker is eligible to receive an award of work

1 disability, compensation is limited to the value of the work disability as
2 calculated above. In no case shall functional impairment and work
3 disability be awarded together.

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

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

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

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

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

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

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

25 ***(A) 30 calendar days from the date of accident or the date of injury***
26 ***by repetitive trauma;***

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

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

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

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

42 ***(3) Where notice is provided in writing, notice must be sent to a***
43 ***supervisor or manager at the employee's principal location of***

1 *employment. The burden shall be on the employee to prove that such*
2 *notice was actually received by the employer.*

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

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

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

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

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

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

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

41 (3) on application for good cause shown.

42 (c) When all parties have submitted the case to an administrative law
43 judge for an award, the administrative law judge shall issue an award

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

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

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

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

1 ~~to be legally sufficient, the district court judge shall order the director to~~
2 ~~assign the case to another administrative law judge or to an assistant~~
3 ~~director. The party or a party's attorney shall file with the workers~~
4 ~~compensation board an affidavit alleging one or more of the grounds~~
5 ~~specified in subsection (e).~~

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

9 ~~(3)~~ (4) Grounds which may be alleged as provided in subsection (e)
10 (2) for change of administrative law judge are that:

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

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

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

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

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

21 ~~(4)~~ (5) In any affidavit filed pursuant to subsection (e)(2), the recital
22 of previous rulings or decisions by the administrative law judge on legal
23 issues or concerning prior motions for change of administrative law judge
24 filed by counsel or such counsel's law firm, pursuant to this subsection,
25 shall not be deemed legally sufficient for any ~~believe~~ *belief* that bias or
26 prejudice exists.

27 (6) *A determination by the workers compensation board as to the*
28 *legal sufficiency of the affidavit for recusal submitted above shall be*
29 *appealable to the court of appeals under the provision of K.S.A. 44-556,*
30 *and amendments thereto.*

31 (f) (1) In any claim that has not proceeded to a regular hearing, a
32 settlement hearing, or an agreed award under the workers compensation
33 act within three years from the date of filing an application for hearing
34 pursuant to K.S.A. 44-534, and amendments thereto, the employer shall be
35 permitted to file with the division an application for dismissal based on
36 lack of prosecution. The matter shall be set for hearing with notice to the
37 claimant's attorney, if the claimant is represented, or to the claimant's last
38 known address. The administrative law judge may grant an extension for
39 good cause shown, which shall be conclusively presumed in the event that
40 the claimant has not reached maximum medical improvement, provided
41 such motion to extend is filed prior to the three year limitation provided
42 for herein. If the claimant cannot establish good cause, the claim shall be
43 dismissed with prejudice by the administrative law judge for lack of

1 prosecution. Such dismissal shall be considered a final disposition at a full
2 hearing on the claim for purposes of employer reimbursement from the
3 fund pursuant to subsection (b) of K.S.A. 44-534a, and amendments
4 thereto.

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

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

18 ~~Sec.-6- 7.~~ K.S.A. 2012 Supp. 44-532a is hereby amended to read as
19 follows: 44-532a. (a) If an employer has no insurance *or has an*
20 *insufficient self-insurance bond or letter of credit* to secure the payment of
21 compensation ~~or has insufficiently funded a self-insurance bond~~, as
22 provided in subsection (b)(1) and (2) of K.S.A. 44-532, and amendments
23 thereto, and such employer is financially unable to pay compensation to an
24 injured worker as required by the workers compensation act, or such
25 employer cannot be located and required to pay such compensation, the
26 injured worker may apply to the director for an award of the compensation
27 benefits, including medical compensation, to which such injured worker is
28 entitled, to be paid from the workers compensation fund. Whenever a
29 worker files an application under this section, the matter shall be assigned
30 to an administrative law judge for hearing. If the administrative law judge
31 is satisfied as to the existence of the conditions prescribed by this section,
32 the administrative law judge may make an award, or modify an existing
33 award, and prescribe the payments to be made from the workers
34 compensation fund as provided in K.S.A. 44-569, and amendments
35 thereto. The award shall be certified to the commissioner of insurance, and
36 upon receipt thereof, the commissioner of insurance shall cause payment
37 to be made to the worker in accordance therewith.

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

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

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

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

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

33 ~~(e)~~ (d) Any civil penalty imposed by this section shall be recovered,
34 by the assistant attorney general upon information received from the
35 director, by issuing and serving upon such employer a summary order or
36 statement of the charges with respect thereto and a hearing shall be
37 conducted thereon in accordance with the provisions of the Kansas
38 administrative procedure act, except that, at the discretion of the director,
39 such civil penalties may be assessed as costs in a workers compensation
40 proceeding by an administrative law judge upon a showing by the assistant
41 attorney general that a required report was not filed which pertains to a
42 claim pending before the administrative law judge.

43 Sec. ~~8~~ **9**. K.S.A. 2012 Supp. 44-575 is hereby amended to read as

1 follows: 44-575. (a) As used in K.S.A. 44-575 through 44-580, and
2 amendments thereto, "state agency" means the state, or any department or
3 agency of the state, but not including the Kansas turnpike authority, the
4 university of Kansas hospital authority, any political subdivision of the
5 state or the district court with regard to district court officers or employees
6 whose total salary is payable by counties.

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

18 (c) The state workers compensation self-insurance fund shall be liable
19 to pay: (1) All compensation for claims arising on and after July 1, 1974,
20 and all other amounts required to be paid by any state agency as a self-
21 insured employer under the workers compensation act and any
22 amendments or additions thereto; (2) the amount that all state agencies are
23 liable to pay of the "carrier's share of expense" of the administration of the
24 office of the director of workers' compensation as provided in K.S.A. 74-
25 712 through 74-719, and amendments thereto, for each fiscal year; (3) all
26 compensation for claims remaining from the self-insurance program which
27 existed prior to July 1, 1974, for institutional employees of the division of
28 mental health and retardation services of the department of social and
29 rehabilitation services; (4) the cost of administering the state workers
30 compensation self-insurance fund including the defense of such fund and
31 any costs assessed to such fund in any proceeding to which it is a party;
32 and (5) the cost of establishing and operating the state workplace health
33 and safety program under subsection (f). For the purposes of K.S.A. 44-
34 575 through 44-580, and amendments thereto, all state agencies are hereby
35 deemed to be a single employer whose liabilities specified in this section
36 are hereby imposed solely upon the state workers compensation self-
37 insurance fund and such employer is hereby declared to be a fully
38 authorized and qualified self-insurer under K.S.A. 44-532, and
39 amendments thereto, but such employer shall not be required to make any
40 reports thereunder.

41 (d) The secretary of ~~administration~~ *health and environment* shall
42 administer the state workers compensation self-insurance fund and all
43 payments from such fund shall be upon warrants of the director of

1 accounts and reports issued pursuant to vouchers approved by the
2 secretary of ~~administration~~ *health and environment* or a person or persons
3 designated by the secretary. The director of accounts and reports may issue
4 warrants pursuant to vouchers approved by the secretary for payments
5 from the state workers compensation self-insurance fund notwithstanding
6 the fact that claims for such payments were not submitted or processed for
7 payment from money appropriated for the fiscal year in which the state
8 workers compensation self-insurance fund first became liable to make
9 such payments.

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

17 (f) There is hereby established the state workplace health and safety
18 program within the state workers compensation self-insurance program of
19 the department of ~~administration~~ *health and environment*. The secretary of
20 ~~administration~~ *health and environment* shall implement and ~~administer~~ *the*
21 *division of industrial health and safety of the Kansas department of labor*
22 *shall assist in administering* the state workplace health and safety program
23 for state agencies. The state workplace health and safety program shall
24 include, but not be limited to:

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

27 (2) workplace health and safety hazard prevention services, including
28 inspection and consultation services;

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

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

32 (5) training for supervisors and employees in healthful and safe work
33 practices.

34 Sec. ~~9~~ **10**. K.S.A. 2012 Supp. 44-577 is hereby amended to read as
35 follows: 44-577. (a) All claims for compensation under the workers
36 compensation act against any state agency for claims arising on and after
37 July 1, 1974, and claims for compensation remaining from the self-
38 insurance program which existed prior to July 1, 1974, for institutional
39 employees of the division of mental health and retardation services of the
40 department of social and rehabilitation services shall be made against the
41 state workers compensation self-insurance fund. Such claims shall be
42 served upon the secretary of ~~administration~~ *health and environment* in the
43 secretary's capacity as administrator of the state workers compensation

1 self-insurance fund in the manner provided for claims against other
2 employers under the workers compensation act. The chief attorney for the
3 department of ~~administration~~ *health and environment*, or another attorney
4 of the department of ~~administration~~ *health and environment* designated by
5 the chief attorney, shall represent and defend the state workers
6 compensation self-insurance fund in all proceedings under the workers
7 compensation act.

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

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

35 ~~Sec. 11.~~ **II.** K.S.A. 44-578 is hereby amended to read as follows: 44-
36 578. The secretary of ~~administration~~ *health and environment* may adopt
37 rules and regulations necessary for the administration of the state workers
38 compensation self-insurance fund, including the processing and settling of
39 claims for compensation made against such fund. ~~Such rules and~~
40 ~~regulations shall be subject to the provisions of K.S.A. 75-3706, and~~
41 ~~amendments thereto, and shall be adopted in accordance therewith.~~

42 ~~Sec. 12.~~ **12.** K.S.A. 44-512, 44-557 and 44-578 and K.S.A. 2012
43 Supp. 2-224a, 44-510d, 44-510e, **44-520**, 44-523, 44-532a, 44-575 and 44-

1 577 are hereby repealed.

2 Sec. ~~12~~. **13.** This act shall take effect and be in force from and after

3 its publication in the statute book.