

## **HOUSE BILL No. 2776**

By Committee on Commerce, Labor and Economic Development

Requested by Representative Clayton

2-8

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1 AN ACT concerning workers compensation; relating to coverage under the  
2 act, notice, benefits, liability limitations, definitions, evidentiary  
3 standards, hearings, admission of evidence, procedures, settlements and  
4 other matters; providing coverage for members of the Kansas national  
5 guard under the workers compensation act; limiting reduction to awards  
6 for functional impairment on the basis of preexisting impairment to  
7 preexisting impairment to the same physical structure as the body part  
8 injured; limiting reductions to benefits based on retirement benefits;  
9 defining registered mail; requiring a judicial determination of  
10 dependency for immediate payment of death benefit; increasing the  
11 maximum amount of death benefits; extending the time period for  
12 payments to dependent children when in schools; providing for a yearly  
13 adjustment to the maximum death benefit to commence in 2027;  
14 increasing the minimum weekly payment for permanent total disability;  
15 adding certain functional impairment requirements to the determination  
16 of permanent total disability; increasing the minimum weekly payment  
17 amount for temporary total disability; providing that loss of use of a  
18 scheduled member shall be the percentage of functional impairment the  
19 employee sustained on account of the injury; reducing the percentage  
20 of functional impairment required for eligibility for permanent partial  
21 general disability compensation; increasing employers' maximum  
22 liability for permanent total disability, temporary total disability,  
23 permanent or temporary partial disability and permanent partial  
24 disability and providing for a yearly adjustment in such maximum  
25 liability limits to commence in 2027; applying an employer's credit for  
26 voluntary payments of unearned wages to any award; increasing the  
27 maximum employer liability for unauthorized medical care; increasing  
28 the evidentiary standard for future medical treatment after maximum  
29 medical improvement in certain circumstances; limiting proceedings  
30 for post-award medical benefits; creating a presumption that no costs or  
31 attorney fees be awarded when requests for post-award medical  
32 benefits are provided within 30 days; defining money for purposes of  
33 the average weekly wage; excluding the first week of employment in  
34 the calculation of an employee's average weekly wage under certain  
35 circumstances; allowing payment of certain benefits by electronic funds

1 transfer or payment card; increasing employer liability for expenses of  
2 claimant for required examinations; establishing procedures for neutral  
3 healthcare examinations and for the exchange of medical reports  
4 between parties; providing for the admission of medical reports without  
5 necessity of additional foundation subject to compliance with certain  
6 procedures; extending deadlines for notice to an employer by an  
7 employee of injury; eliminating the three-year deadline for a claimant's  
8 motion to extend time for proceeding to avoid dismissal for lack of  
9 prosecution; prohibiting an award from including future medical  
10 treatment unless a specified standard of proof is met; clarifying certain  
11 language referencing a claimant; providing a procedure for expedited  
12 settlement on written stipulations by means of a form established by the  
13 director of workers compensation; allowing the record of hearings by  
14 digital recording and transcription by either a court reporter or a notary  
15 public; providing that certified reporters fees be taxed as costs if no  
16 record is taken; providing for the workers compensation fund to  
17 implead a principal as a party in a proceeding; providing for certain  
18 other changes to the workers compensation act; amending K.S.A. 44-  
19 501, 44-508, 44-510b, 44-510c, 44-510d, 44-510e, 44-510f, 44-510h,  
20 44-510k, 44-511, 44-512, 44-515, 44-516, 44-519, 44-520, 44-523, 44-  
21 525, 44-526, 44-531, 44-534a, 44-552 and 44-566a and repealing the  
22 existing sections.

23  
24 *Be it enacted by the Legislature of the State of Kansas:*

25 New Section 1. (a) Except as provided by subsection (b), on and after  
26 July 1, 2024, any member of the national guard who is entitled to benefits  
27 under K.S.A. 48-263, and amendments thereto, subject to the limitations of  
28 K.S.A. 48-264, and amendments thereto, shall, in lieu of receiving the  
29 benefits under K.S.A. 48-261 through 48-271, and amendments thereto, be  
30 subject to the procedures, benefits and compensation established by the  
31 workers compensation act in K.S.A. 44-501 et seq., and amendments  
32 thereto.

33 (b) Any wound, injury, disease, illness or death that occurs prior to  
34 July 1, 2024, that entitles a member to benefits shall be governed by  
35 K.S.A. 48-261 through 48-271, and amendments thereto.

36 (c) The average weekly wage of a member, for the purposes of  
37 K.S.A. 44-511, and amendments thereto, shall be the member's current  
38 military earnings.

39 (d) If a member or their dependents receive federal compensation due  
40 to a wound, injury, disease, illness or death that is covered by the workers  
41 compensation act, the amount of federal compensation shall be deducted  
42 from the amount otherwise due from the state of Kansas. Before any claim  
43 is processed under the workers compensation act, the member shall sign an

1 authorization consenting to the release of any information pertaining to the  
 2 federal compensation paid for any wound, injury, disease, illness or death  
 3 covered under the workers compensation act.

4 Sec. 2. K.S.A. 44-501 is hereby amended to read as follows: 44-501.

5 (a) (1) Compensation for an injury shall be disallowed if such injury to the  
 6 employee results from:

- 7 (A) The employee's deliberate intention to cause such injury;
- 8 (B) the employee's willful failure to use a guard or protection against  
 9 accident or injury which is required pursuant to any statute and provided  
 10 for the employee;

- 11 (C) the employee's willful failure to use a reasonable and proper  
 12 guard and protection voluntarily furnished the employee by the employer;

- 13 (D) the employee's reckless violation of their employer's workplace  
 14 safety rules or regulations; or

- 15 (E) the employee's voluntary participation in fighting or horseplay  
 16 with a co-employee for any reason, work related or otherwise.

17 (2) Subparagraphs (B) and (C) of paragraph (1) of subsection (a) shall  
 18 not apply when it was reasonable under the totality of the circumstances to  
 19 not use such equipment, or if the employer approved the work engaged in  
 20 at the time of an accident or injury to be performed without such  
 21 equipment.

22 (b) (1) (A) The employer shall not be liable under the workers  
 23 compensation act where the injury, disability or death was contributed to  
 24 by the employee's use or consumption of alcohol or any drugs, chemicals  
 25 or any other compounds or substances, including, but not limited to, any  
 26 drugs or medications which are available to the public without a  
 27 prescription from a ~~health-care~~ *healthcare* provider, prescription drugs or  
 28 medications, any form or type of narcotic drugs, marijuana, stimulants,  
 29 depressants or hallucinogens.

30 (B) In the case of drugs or medications which are available to the  
 31 public without a prescription from a ~~health-care~~ *healthcare* provider and  
 32 prescription drugs or medications, compensation shall not be denied if the  
 33 employee can show that such drugs or medications were being taken or  
 34 used in therapeutic doses and there have been no prior incidences of the  
 35 employee's impairment on the job as the result of the use of such drugs or  
 36 medications within the previous 24 months.

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

42 Confirmatory  
 43 test cutoff

	levels (ng/ml)
1 Marijuana metabolite <sup>1</sup> .....	15
2 Cocaine metabolite <sup>2</sup> .....	150
3 Opiates:	
4     Morphine .....	2000
5     Codeine .....	2000
6 6-Acetylmorphine <sup>4</sup> .....	10 ng/ml
7 Phencyclidine .....	25
8 Amphetamines:	
9     Amphetamine .....	500
10     Methamphetamine <sup>3</sup> .....	500

11 <sup>1</sup> Delta-9-tetrahydrocannabinol-9-carboxylic acid.

12 <sup>2</sup> Benzoylcegonine.

13 <sup>3</sup> Specimen must also contain amphetamine at a concentration greater  
14 than or equal to 200 ng/ml.

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

16 (D) If it is shown that the employee was impaired pursuant to  
17 subsection (b)(1)(C) at the time of the injury, there shall be a rebuttable  
18 presumption that the accident, injury, disability or death was contributed to  
19 by such impairment. The employee may overcome the presumption of  
20 contribution by clear and convincing evidence.

21 (E) An employee's refusal to submit to a chemical test at the request  
22 of the employer shall result in the forfeiture of benefits under the workers  
23 compensation act if the employer had sufficient cause to suspect the use of  
24 alcohol or drugs by the claimant or if the employer's policy clearly  
25 authorizes post-injury testing.

26 (2) The results of a chemical test shall be admissible evidence to  
27 prove impairment if the employer establishes that the testing was done  
28 under any of the following circumstances:

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

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

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

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

41 (E) as a result of federal or state law or a federal or state rule or  
42 regulation having the force and effect of law requiring a post-injury testing  
43

1 program and such required program was properly implemented at the time  
2 of testing.

3 (3) Notwithstanding subsection (b)(2), the results of a chemical test  
4 performed on a sample collected by an employer shall not be admissible  
5 evidence to prove impairment unless the following conditions are met:

6 (A) The test sample was collected within a reasonable time following  
7 the accident or injury;

8 (B) the collecting and labeling of the test sample was performed by or  
9 under the supervision of a licensed ~~health care~~ *healthcare* professional;

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

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

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

21 (F) a split sample sufficient for testing shall be retained and made  
22 available to the employee within 48 hours of a positive test.

23 (c) (1) Except as provided in paragraph (2), compensation shall not  
24 be paid in case of coronary or coronary artery disease or cerebrovascular  
25 injury unless it is shown that the exertion of the work necessary to  
26 precipitate the disability was more than the employee's usual work in the  
27 course of the employee's regular employment.

28 (2) For events occurring on or after July 1, 2014, in the case of a  
29 firefighter as defined by K.S.A. 40-1709(b)(1), and amendments thereto,  
30 or a law enforcement officer as defined by K.S.A. 74-5602, and  
31 amendments thereto, coronary or coronary artery disease or  
32 cerebrovascular injury shall be compensable if:

33 (A) The injury can be identified as caused by a specific event  
34 occurring in the course and scope of employment;

35 (B) the coronary or cerebrovascular injury occurred within 24 hours  
36 of the specific event; and

37 (C) the specific event was the prevailing factor in causing the  
38 coronary or coronary artery disease or cerebrovascular injury.

39 (d) Except as provided in the workers compensation act, no  
40 construction design professional who is retained to perform professional  
41 services on a construction project or any employee of a construction  
42 design professional who is assisting or representing the construction  
43 design professional in the performance of professional services on the site

1 of the construction project, shall be liable for any injury resulting from the  
2 employer's failure to comply with safety standards on the construction  
3 project for which compensation is recoverable under the workers  
4 compensation act, unless responsibility for safety practices is specifically  
5 assumed by contract. The immunity provided by this subsection to any  
6 construction design professional shall not apply to the negligent  
7 preparation of design plans or specifications.

8 (e) An award of compensation for permanent partial impairment,  
9 work disability, or permanent total disability shall be reduced by the  
10 amount of functional impairment determined to be preexisting *to the same*  
11 *physical structure as the body part injured*. Any such reduction shall not  
12 apply to temporary total disability, nor shall it apply to compensation for  
13 medical treatment.

14 (1) Where workers compensation benefits have previously been  
15 awarded through settlement or judicial or administrative determination in  
16 Kansas, the percentage basis of the prior settlement or award shall  
17 conclusively establish the amount of functional impairment determined to  
18 be preexisting. Where workers compensation benefits have not previously  
19 been awarded through settlement or judicial or administrative  
20 determination in Kansas, the amount of preexisting functional impairment  
21 shall be established by competent evidence.

22 (2) In all cases, the applicable reduction shall be calculated as  
23 follows:

24 (A) If the preexisting impairment is the result of injury sustained  
25 while working for the employer against whom workers compensation  
26 benefits are currently being sought, any award of compensation shall be  
27 reduced by the current dollar value attributable under the workers  
28 compensation act to the percentage of functional impairment determined to  
29 be preexisting. The "current dollar value" shall be calculated by  
30 multiplying the percentage of preexisting impairment by the compensation  
31 rate in effect on the date of the accident or injury against which the  
32 reduction will be applied.

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

36 (f) If the employee receives, ~~whether periodically or by lump sum,~~  
37 ~~retirement benefits under the federal social security act or retirement~~  
38 ~~benefits from any other retirement system, program, policy or plan which~~  
39 ~~is provided by the employer against which the claim is being made,~~ any  
40 compensation benefit payments ~~which~~ *for permanent partial disability or*  
41 *permanent total disability* that the employee is eligible to receive under the  
42 workers compensation act for such claim shall be reduced by *50% of the*  
43 weekly equivalent amount of ~~the total amount of all~~ such retirement

1 ~~benefits, less any portion of any such retirement benefit, other than~~  
2 ~~retirement benefits under the federal social security act, that is attributable~~  
3 ~~to payments or contributions made by the employee, but in no event shall~~  
4 the workers compensation benefit be less than the workers compensation  
5 benefit payable for the employee's percentage of functional impairment.  
6 *The reduction in benefits allowed by this subsection shall not apply to*  
7 *temporary total disability compensation or temporary partial disability*  
8 *compensation.*

9 (g) *If the employee receives retirement benefits from any other*  
10 *retirement system, program, policy or plan that is provided by the*  
11 *employer against whom the claim is being made, any compensation for*  
12 *permanent partial disability or permanent total disability benefits the*  
13 *employee is eligible to receive under the workers compensation act for the*  
14 *claim shall be reduced by the weekly equivalent amount of such retirement*  
15 *benefits less any portion of any such retirement benefit that is attributable*  
16 *to payments or contributions made by the employee. In no event shall the*  
17 *workers compensation benefit be less than the workers compensation*  
18 *benefit payable for the employee's percentage of functional impairment.*  
19 *The credit allowed by this subsection shall not apply to temporary total*  
20 *disability compensation or temporary partial disability compensation.*

21 (h) Where the employee elects to take retirement benefits in a lump  
22 sum, the lump sum payment shall be amortized at the rate of 4% per year  
23 over the employee's life expectancy to determine the weekly equivalent  
24 value of the benefits.

25 Sec. 3. K.S.A. 44-508 is hereby amended to read as follows: 44-508.  
26 As used in the workers compensation act:

27 (a) "Employer" includes: (1) Any person or body of persons,  
28 corporate or unincorporated, and the legal representative of a deceased  
29 employer or the receiver or trustee of a person, corporation, association or  
30 partnership; (2) the state or any department, agency or authority of the  
31 state, any city, county, school district or other political subdivision or  
32 municipality or public corporation and any instrumentality thereof; and (3)  
33 for the purposes of community service work, the entity for which the  
34 community service work is being performed and the governmental agency  
35 that assigned the community service work, if any, if either such entity or  
36 such governmental agency has filed a written statement of election with  
37 the director to accept the provisions under the workers compensation act  
38 for persons performing community service work and in such case such  
39 entity and such governmental agency shall be deemed to be the joint  
40 employer of the person performing the community service work and both  
41 shall have the rights, liabilities and immunities provided under the workers  
42 compensation act for an employer with regard to the community service  
43 work, except that the liability for providing benefits shall be imposed only

1 on the party that filed such election with the director or on both if both  
2 parties have filed such election with the director; for purposes of  
3 community service work, "governmental agency" shall not include any  
4 court or any officer or employee thereof and any case where there is  
5 deemed to be a "joint employer" shall not be construed to be a case of dual  
6 or multiple employment.

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

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

42 (2) "Members of a family" means only surviving legal spouse and  
43 children; or if no surviving legal spouse or children, then parents or



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

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

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

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

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

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

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

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

38 In the case of injury by repetitive trauma, the date of injury shall be the  
39 earliest of:

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

43 (2) the date the employee, while employed for the employer against

1 whom benefits are sought, is placed on modified or restricted duty by a  
2 physician due to the diagnosed repetitive trauma;

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

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

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

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

13 (2) An injury is compensable only if it arises out of and in the course  
14 of employment. An injury is not compensable because work was a  
15 triggering or precipitating factor. An injury is not compensable solely  
16 because it aggravates, accelerates or exacerbates a preexisting condition or  
17 renders a preexisting condition symptomatic.

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

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

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

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

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

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

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

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

35 (i) Injury that occurred as a result of the natural aging process or by  
36 the normal activities of day-to-day living;

37 (ii) accident or injury that arose out of a neutral risk with no  
38 particular employment or personal character;

39 (iii) accident or injury that arose out of a risk personal to the worker;  
40 or

41 (iv) accident or injury that arose either directly or indirectly from  
42 idiopathic causes.

43 (B) The words "arising out of and in the course of employment" as

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

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

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

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

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

33 (j) "Healthcare provider" means any person licensed, by the proper  
34 licensing authority of this state, another state or the District of Columbia,  
35 to practice medicine and surgery, osteopathy, chiropractic, dentistry,  
36 optometry, podiatry, audiology or psychology.

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

38 (l) "Construction design professional" means any person who is an  
39 architect, professional engineer, landscape architect or land surveyor who  
40 has been issued a license by the state board of technical professions to  
41 practice such technical profession in Kansas or any corporation organized  
42 to render professional services through the practice of one or more of such  
43 technical professions in Kansas under the professional corporation law of

1 Kansas or any corporation issued a certificate of authorization under  
2 K.S.A. 74-7036, and amendments thereto, to practice one or more of such  
3 technical professions in Kansas.

4 (m) "Community service work" means: (1) Public or community  
5 service performed as a result of a contract of diversion or of assignment to  
6 a community corrections program or conservation camp or suspension of  
7 sentence or as a condition of probation or in lieu of a fine imposed by  
8 court order; or (2) public or community service or other work performed  
9 as a requirement for receipt of any kind of public assistance in accordance  
10 with any program administered by the secretary for children and families.

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

20 (o) "Peer review" means an evaluation by a peer review committee of  
21 the appropriateness, quality and cost of healthcare and health services  
22 provided a patient that is based on accepted standards of the healthcare  
23 profession involved and that is conducted in conjunction with utilization  
24 review.

25 (p) "Peer review committee" means a committee composed of  
26 healthcare providers licensed to practice the same healthcare profession as  
27 the healthcare provider who rendered the healthcare services being  
28 reviewed.

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

37 ~~On and after the effective date of this act,~~ "Workers compensation  
38 board" or "board" means the workers compensation appeals board  
39 established under K.S.A. 44-555c, and amendments thereto.

40 (s) "Usual charge" means the amount most commonly charged by  
41 healthcare providers for the same or similar services.

42 (t) "Customary charge" means the usual rates or range of fees charged  
43 by healthcare providers in a given locale or area.

1 (u) "Functional impairment" means the extent, expressed as a  
2 percentage, of the loss of a portion of the total physiological capabilities of  
3 the human body as established by competent medical evidence and based  
4 on the ~~fourth~~ *sixth* edition of the American medical association guides to  
5 the evaluation of *permanent* impairment, if the impairment is contained  
6 therein.

7 (v) "Authorized treating physician" means a licensed physician or  
8 other healthcare provider authorized by the employer or insurance carrier,  
9 or both, or appointed pursuant to court-order to provide those medical  
10 services deemed necessary to diagnose and treat an injury arising out of  
11 and in the course of employment.

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

16 (x) *"Registered mail" means:*

17 (1) *Registered mail or certified mail that provides a mailing receipt*  
18 *or is trackable and provides proof of receipt;*

19 (2) *electronic mail with proof that the electronic mail was delivered;*  
20 *or*

21 (3) *facsimile with proof of delivery.*

22 (y) *"Complete medical report" means the report of a healthcare*  
23 *provider giving the healthcare provider's qualifications and the patient's*  
24 *history, complaints, details of the findings of any and all laboratory, x-ray*  
25 *and other technical examinations, diagnosis, prognosis, nature of*  
26 *impairment and disability, if any, and an estimate of the percentage of*  
27 *permanent partial disability, if any. An element or elements of a "complete*  
28 *medical report" may be met by the healthcare provider's records.*

29 Sec. 4. K.S.A. 44-510b is hereby amended to read as follows: 44-  
30 510b. Where death results from injury, compensation shall be paid as  
31 provided in K.S.A. 44-510h and 44-510i, and amendments thereto, and as  
32 follows:

33 (a) If an employee leaves any dependents wholly dependent upon the  
34 employee's earnings at the time of the accident or injury, all compensation  
35 benefits under this section shall be paid to the dependent persons. *Upon a*  
36 *judicial determination of dependency*, there shall be an initial payment of  
37 \$60,000 to the surviving legal spouse or a wholly dependent child or  
38 children or both. The initial payment shall not be subject to the 8%  
39 discount as provided in K.S.A. 44-531, and amendments thereto. The  
40 initial payment shall be immediately due and payable and apportioned  
41 50% to the surviving legal spouse and 50% to the dependent children.  
42 Thereafter, the dependents shall be paid weekly compensation, except as  
43 otherwise provided in this section, in a total sum to all the dependents,

1 equal to  $66\frac{2}{3}\%$  of the average weekly wage of the employee at the time of  
2 the accident or injury, computed as provided in K.S.A. 44-511, and  
3 amendments thereto, but in no event shall the weekly benefits exceed the  
4 maximum weekly benefits provided in K.S.A. 44-510c, and amendments  
5 thereto, nor be less than a minimum weekly benefit of the dollar amount  
6 nearest to 50% of the state's average weekly wage as determined pursuant  
7 to K.S.A. 44-511, and amendments thereto, subject to the following:

8 (1) If the employee leaves a surviving legal spouse or a wholly  
9 dependent child or children, or both, who are eligible for benefits under  
10 this section, then all death benefits shall be paid to the surviving spouse or  
11 children, or both, and no benefits shall be paid to any other wholly or  
12 partially dependent persons.

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

15 (3) Any wholly dependent child of the employee shall be paid  
16 compensation, except as otherwise provided in this section, until the  
17 dependent child becomes 18 years of age, unless the child is enrolled in  
18 high school. In that event, compensation shall continue until May 30<sup>th</sup> of  
19 the child's senior year in high school or until the child becomes 19 years of  
20 age, whichever is earlier. A wholly dependent child of the employee shall  
21 be paid compensation, except as otherwise provided in this section, until  
22 the dependent child becomes 23 years of age during any period of time  
23 that one of the following conditions is met:

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

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

28 (4) If the employee leaves no legal spouse or dependent children  
29 eligible for benefits under this section but leaves other dependents wholly  
30 dependent upon the employee's earnings, the other dependents shall  
31 receive weekly compensation benefits as provided in this subsection until  
32 death, remarriage or so long as the other dependents do not receive more  
33 than 50% of their support from any other earnings or income or from any  
34 other source, except that the maximum benefits payable to all the other  
35 dependents, regardless of the number of the other dependents, shall not  
36 exceed a maximum amount of \$100,000.

37 (b) Where the employee leaves a surviving legal spouse and  
38 dependent children who were wholly dependent upon the employee's  
39 earnings and are eligible for benefits under this section 50% of the  
40 maximum weekly benefits payable shall be apportioned to the spouse and  
41 50% to the dependent children.

42 (c) If an employee does not leave any dependents who were wholly  
43 dependent upon the employee's earnings at the time of the injury but

1 leaves dependents, other than a spouse or children, in part dependent on  
2 the employee's earnings, the percentage of a sum equal to three times the  
3 employee's average yearly earnings but not exceeding \$100,000 but not  
4 less than \$25,000, as the employee's average annual contributions which  
5 the employee made to the support of the dependents during the two years  
6 preceding the date of the injury, bears to the employee's average yearly  
7 earnings during the contemporaneous two-year period, shall be paid in  
8 compensation to the dependents, in weekly payments as provided in  
9 subsection (a), not to exceed \$100,000 to all the dependents.

10 (d) If an employee does not leave any dependents, either wholly or  
11 partially dependent upon the employee, a lump-sum payment of \$100,000  
12 shall be made to the legal heirs of the employee in accordance with Kansas  
13 law. If the employer procured a life insurance policy with beneficiaries  
14 designated by the employee and in an amount not less than \$50,000, then  
15 the amount paid to the legal heirs under this section shall be reduced by  
16 the amount of the life insurance policy up to a maximum deduction of  
17 \$100,000. However under no circumstances shall the payment escheat to  
18 the state.

19 (e) The administrative law judge, except as otherwise provided in this  
20 section, shall have the power and authority to apportion and reapportion  
21 the compensation allowed under this section, either to wholly dependent  
22 persons or partially dependent persons, in accordance with the degree of  
23 dependency as of the date of the injury, except that the weekly payment of  
24 compensation to any and all dependents shall not exceed the maximum nor  
25 be less than the minimum weekly benefits provided in subsection (a).

26 (f) In all cases of death compensable under this section, the employer  
27 shall pay the reasonable expense of burial not exceeding \$10,000. Where  
28 required, the employer shall pay the costs of a court-appointed conservator  
29 not to exceed \$2,500.

30 (g) The marriage or death of any dependent shall terminate all  
31 compensation, under this section, to the dependent except the marriage of  
32 the surviving legal spouse shall not terminate benefits to the spouse. Upon  
33 the death of the surviving legal spouse or the marriage or death of a  
34 dependent child, the compensation payable to the spouse or child shall be  
35 reapportioned to those, among the surviving legal spouse and dependent  
36 children, who remain eligible to receive compensation under this section.

37 (h) Notwithstanding any other provision in this section to the  
38 contrary, the maximum amount of compensation benefits payable under  
39 this section, including the initial payment in subsection (a) to any and all  
40 dependents by the employer shall not exceed a total amount of ~~\$300,000~~  
41 ~~\$500,000~~ and when the total amount has been paid the liability of the  
42 employer for any further compensation under this section to dependents,  
43 ~~other than minor children of the employee,~~ shall cease except that the

1 payment of compensation under this section to any ~~minor wholly~~  
2 *dependent* child of the employee shall continue ~~for the period of the child's~~  
3 ~~minority until the latest of the following dates~~ at the weekly rate in effect  
4 when the employer's liability ~~is would otherwise be terminated under this~~  
5 ~~subsection and shall not be subject to termination under this subsection~~  
6 ~~until the child:~~

7 (1) *The wholly dependent child, who is not enrolled in high school,*  
8 *becomes 18 years of age;*

9 (2) *if enrolled in high school, May 30 of the wholly dependent child's*  
10 *senior year in high school or until the child becomes 19 years of age,*  
11 *whichever occurs first; or*

12 (3) *the wholly dependent child's 23<sup>rd</sup> birthday, if such child is a*  
13 *student enrolled full-time in an accredited institution of higher education*  
14 *or vocational education.*

15 (i) *The maximum compensation benefits payable as provided by*  
16 *subsection (h) shall remain in effect until June 30, 2027. Beginning on*  
17 *July 1, 2027, and each July 1 thereafter, the maximum compensation*  
18 *benefits payable as provided by subsection (h) shall be adjusted to reflect*  
19 *changes in the state average weekly wage. To determine the yearly*  
20 *adjustment, the director shall determine the percentage of change in the*  
21 *state average weekly wage for the current year pursuant to K.S.A. 44-704,*  
22 *and amendments thereto, as well as the percentage change in the state*  
23 *average weekly wage for each of the prior four years. Each year's*  
24 *percentage change in the state average weekly wage shall be added*  
25 *together with the sum then divided by five to arrive at the average*  
26 *percentage change over the five-year period. The maximum compensation*  
27 *benefits shall then be adjusted by such average percentage change.*

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



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

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

7 (a) (1) Where permanent total disability results from the injury,  
8 weekly payments shall be made during the period of permanent total  
9 disability in a sum equal to  $66\frac{2}{3}\%$  of the average weekly wage of the  
10 injured employee, computed as provided in K.S.A. 44-511, and  
11 amendments thereto, but in no case less than ~~\$25~~ \$50 per week nor more  
12 than the dollar amount nearest to 75% of the state's average weekly wage,  
13 determined as provided in K.S.A. 44-511, and amendments thereto, per  
14 week. The payment of compensation for permanent total disability shall  
15 continue for the duration of such disability, subject to review and  
16 modification as provided in K.S.A. 44-528, and amendments thereto.

17 (2) (A) Permanent total disability exists when the employee, on  
18 account of the injury;

19 (i) Has been rendered completely and permanently incapable of  
20 engaging in any type of substantial and gainful employment;

21 (ii) *suffers impairment as established by competent medical evidence*  
22 *and based on the 6<sup>th</sup> edition of the American medical association guides to*  
23 *the evaluation of permanent impairment, if the impairment is contained*  
24 *therein; and*

25 (iii) *suffers a percentage of functional impairment determined to be*  
26 *caused solely by the injury that is equal to or exceeds 10% to the body as*  
27 *a whole or the overall functional impairment is equal to or exceeds 15% if*  
28 *there is a preexisting functional impairment.*

29 (B) Expert evidence shall be required to prove permanent total  
30 disability.

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

34 (b) (1) Where temporary total disability results from the injury, no  
35 compensation shall be paid during the first week of disability, except that  
36 provided in K.S.A. 44-510h and 44-510i, and amendments thereto, unless  
37 the temporary total disability exists for three consecutive weeks, in which  
38 case compensation shall be paid for the first week of such disability.  
39 Thereafter weekly payments shall be made during such temporary total  
40 disability, in a sum equal to  $66\frac{2}{3}\%$  of the average gross weekly wage of  
41 the injured employee, computed as provided in K.S.A. 44-511, and  
42 amendments thereto, but in no case less than ~~\$25~~ \$50 per week nor more  
43 than the dollar amount nearest to 75% of the state's average weekly wage,

1 determined as provided in K.S.A. 44-511, and amendments thereto, per  
2 week.

3 (2) (A) Temporary total disability exists when the employee, on  
4 account of the injury, has been rendered completely and temporarily  
5 incapable of engaging in any type of substantial and gainful employment.  
6 A release issued by a ~~health-care~~ *healthcare* provider with temporary  
7 restrictions for an employee may or may not be determinative of the  
8 employee's actual ability to be engaged in any type of substantial and  
9 gainful employment, provided that if there is an authorized treating  
10 physician, such physician's opinion regarding the employee's work status  
11 shall be presumed to be determinative.

12 (B) Where the employee remains employed with the employer  
13 against whom benefits are sought, an employee shall be entitled to  
14 temporary total disability benefits if the authorized treating physician  
15 imposed temporary restrictions as a result of the work injury which the  
16 employer cannot accommodate. A refusal by the employee of  
17 accommodated work within the temporary restrictions imposed by the  
18 authorized treating physician shall result in a rebuttable presumption that  
19 the employee is ineligible to receive temporary total disability benefits.

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

25 (3) Where no award has been entered, a return by the employee to  
26 any type of substantial and gainful employment shall suspend the  
27 employee's right to the payment of temporary total disability  
28 compensation, but shall not affect any right the employee may have to  
29 compensation for partial disability in accordance with K.S.A. 44-510d and  
30 44-510e, and amendments thereto.

31 (4) An employee shall not be entitled to receive temporary total  
32 disability benefits for those weeks during which the employee is also  
33 receiving unemployment benefits.

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

37 Sec. 6. K.S.A. 44-510d is hereby amended to read as follows: 44-  
38 510d. (a) Where disability, partial in character but permanent in quality,  
39 results from the injury, the injured employee shall be entitled to the  
40 compensation provided in K.S.A. 44-510h and 44-510i, and amendments  
41 thereto. The injured employee may be entitled to payment of temporary  
42 total disability as defined in K.S.A. 44-510c, and amendments thereto, or  
43 temporary partial disability as ~~defined~~ *provided* in ~~subsection (a)(1) of~~

1 K.S.A. 44-510e, and amendments thereto, provided that the injured  
2 employee shall not be entitled to any other or further compensation for or  
3 during the first week following the injury unless such disability exists for  
4 three consecutive weeks, in which event compensation shall be paid for  
5 the first week. Thereafter compensation shall be paid for temporary total or  
6 temporary partial disability as provided in the following schedule,  $66\frac{2}{3}\%$   
7 of the average weekly wages to be computed as provided in K.S.A. 44-  
8 511, and amendments thereto, except that in no case shall the weekly  
9 compensation be more than the maximum as provided for in K.S.A. 44-  
10 510c, and amendments thereto.

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

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

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

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

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

20 (5) For the loss of a fourth finger, commonly called the little finger,  
21 15 weeks.

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

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

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

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

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

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

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

- 1 (13) For the loss of an arm, excluding the shoulder joint, shoulder  
2 girdle, shoulder musculature or any other shoulder structures, 210 weeks,  
3 and for the loss of an arm, including the shoulder joint, shoulder girdle,  
4 shoulder musculature or any other shoulder structures, 225 weeks.
- 5 (14) For the loss of a foot, 125 weeks.
- 6 (15) For the loss of a lower leg, 190 weeks.
- 7 (16) For the loss of a leg, 200 weeks.
- 8 (17) For the loss of an eye, or the complete loss of the sight thereof,  
9 120 weeks.
- 10 (18) Amputation or severance below the wrist shall be considered as  
11 the loss of a hand. Amputation at the wrist and below the elbow shall be  
12 considered as the loss of the forearm. Amputation at or above the elbow  
13 shall be considered loss of the arm. Amputation below the ankle shall be  
14 considered loss of the foot. Amputation at the ankle and below the knee  
15 shall be considered as loss of the lower leg. Amputation at or above the  
16 knee shall be considered as loss of the leg.
- 17 (19) For the complete loss of hearing of both ears, 110 weeks.
- 18 (20) For the complete loss of hearing of one ear, 30 weeks.
- 19 (21) Permanent loss of the use of a finger, thumb, hand, shoulder,  
20 arm, forearm, toe, foot, leg or lower leg or the permanent loss of the sight  
21 of an eye or the hearing of an ear, shall be equivalent to the loss thereof.  
22 For the permanent partial loss of the use of a finger, thumb, hand,  
23 shoulder, arm, toe, foot or leg, or the sight of an eye or the hearing of an  
24 ear, compensation shall be paid as provided for in K.S.A. 44-510c, and  
25 amendments thereto, per week during that proportion of the number of  
26 weeks in the foregoing schedule provided for the loss of such finger,  
27 thumb, hand, shoulder, arm, toe, foot or leg or the sight of an eye or the  
28 hearing of an ear, which partial loss thereof bears to the total loss of a  
29 finger, thumb, hand, shoulder, arm, toe, foot or leg, or the sight of an eye  
30 or the hearing of an ear; but in no event shall the compensation payable  
31 hereunder for such partial loss exceed the compensation payable under the  
32 schedule for the total loss of such finger, thumb, hand, arm, toe, foot or  
33 leg, or the sight of an eye or the hearing of an ear, exclusive of the healing  
34 period. As used in this paragraph (21), "shoulder" means the shoulder  
35 joint, shoulder girdle, shoulder musculature or any other shoulder  
36 structures.
- 37 (22) For traumatic hernia, compensation shall be limited to the  
38 compensation under K.S.A. 44-510h and 44-510i, and amendments  
39 thereto, compensation for temporary total disability during such period of  
40 time as such employee is actually unable to work on account of such  
41 hernia, and, in the event such hernia is inoperable, weekly compensation  
42 during 12 weeks, except that, in the event that such hernia is operable, the  
43 unreasonable refusal of the employee to submit to an operation for surgical

1 repair of such hernia shall deprive such employee of any benefits under the  
2 workers compensation act.

3 (23) Loss of or loss of use of a scheduled member shall be based  
4 ~~upon permanent~~ *the percentage of functional* impairment of function to the  
5 ~~scheduled member as determined using the fourth edition of the American~~  
6 ~~medical association guides to the evaluation of permanent impairment, if~~  
7 ~~the impairment is contained therein, until January 1, 2015, but for injuries~~  
8 ~~occurring on and after January 1, 2015, shall be determined by using~~  
9 ~~employee sustained on account of the injury as established by competent~~  
10 ~~medical evidence and based on the sixth 6<sup>th</sup> edition of the American~~  
11 ~~medical association guides to the evaluation of permanent impairment, if~~  
12 ~~the impairment is contained therein.~~

13 (24) Where an injury results in the loss of or loss of use of more than  
14 one scheduled member within a single extremity, the functional  
15 impairment attributable to each scheduled member ~~shall be combined~~  
16 ~~pursuant to the fourth edition of the American medical association guides~~  
17 ~~for evaluation of permanent impairment until January 1, 2015, but for~~  
18 ~~injuries occurring on and after January 1, 2015, shall be combined~~  
19 ~~pursuant to the sixth 6<sup>th</sup> edition of the American medical association guides~~  
20 ~~to the evaluation of permanent impairment, and compensation awarded~~  
21 ~~shall be calculated to the highest scheduled member actually impaired.~~

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

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

36 (1) Payment rate shall be the lesser of: (A) The amount determined by  
37 multiplying the average weekly wage of the worker prior to such injury by  
38  $66\frac{2}{3}\%$ ; or (B) the maximum provided in K.S.A. 44-510c, and amendments  
39 thereto;

40 (2) weeks payable shall be determined as follows: (A) Determine the  
41 weeks of benefits provided for the injury on schedule; (B) determine the  
42 weeks of temporary compensation paid by adding the amounts of  
43 temporary total and temporary partial disability compensation paid and

1 dividing the sum by the payment rate above; (C) subtract the weeks of  
2 temporary compensation calculated in (d)(2)(B) from the weeks of benefits  
3 provided for the injury as determined in (d)(2)(A); and (D) multiply the  
4 weeks as determined in (d)(2)(C) by the percentage of permanent partial  
5 impairment of function as determined under subsection (b)(23).

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

10 Sec. 7. K.S.A. 44-510e is hereby amended to read as follows: 44-  
11 510e. (a) In case of whole body injury resulting in temporary or permanent  
12 partial general disability not covered by the schedule in K.S.A. 44-510d,  
13 and amendments thereto, the employee shall receive weekly compensation  
14 as determined in this subsection during the period of temporary or  
15 permanent partial general disability not exceeding a maximum of 415  
16 weeks.

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

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

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

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

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

36 (B) The extent of permanent partial general disability shall be the  
37 percentage of functional impairment the employee sustained on account of  
38 the injury as established by competent medical evidence and based on the  
39 ~~fourth~~ 6<sup>th</sup> edition of the American medical association guides to the  
40 evaluation of permanent impairment, if the impairment is contained  
41 therein, ~~until January 1, 2015, but for injuries occurring on and after~~  
42 ~~January 1, 2015, based on the sixth edition of the American medical~~  
43 ~~association guides to the evaluation of permanent impairment, if the~~

1 impairment is contained therein.

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

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

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

13 In such cases, the extent of work disability is determined by averaging  
14 together the percentage of post-injury task loss demonstrated by the  
15 employee to be caused by the injury and the percentage of post-injury  
16 wage loss demonstrated by the employee to be caused by the injury.

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

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

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

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

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

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

14 (F) The amount of compensation for whole body injury under this  
15 section shall be determined by multiplying the payment rate by the weeks  
16 payable. As used in this section: (1) The payment rate shall be the lesser  
17 of: (A) The amount determined by multiplying the average weekly wage  
18 of the worker prior to such injury by  $66\frac{2}{3}\%$ ; or (B) the maximum provided  
19 in K.S.A. 44-510c, and amendments thereto; (2) weeks payable shall be  
20 determined as follows: (A) Determine the weeks of temporary  
21 compensation paid by adding the amounts of temporary total and  
22 temporary partial disability compensation paid and dividing the sum by the  
23 payment rate above; (B) subtract from 415 weeks the total number of  
24 weeks of temporary compensation paid as determined in (F)(2)(A),  
25 excluding the first 15 such weeks; and (3) multiply the number of weeks as  
26 determined in (F)(2)(B) by the percentage of functional impairment  
27 pursuant to subsection (a)(2)(B) or the percentage of work disability  
28 pursuant to subsection (a)(2)(C), whichever is applicable.

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

33 The resulting award shall be paid for the number of disability weeks at  
34 the payment rate until fully paid or modified. In any case of permanent  
35 partial disability under this section, the employee shall be paid  
36 compensation for not to exceed 415 weeks following the date of such  
37 injury. If there is an award of permanent disability as a result of the  
38 compensable injury, there shall be a presumption that disability existed  
39 immediately after such injury. Under no circumstances shall the period of  
40 permanent partial disability run concurrently with the period of temporary  
41 total or temporary partial disability.

42 (b) If an employee has sustained an injury for which compensation is  
43 being paid, and the employee's death is caused by other and independent



1 causes, any payment of compensation already due the employee at the  
2 time of death and then unpaid shall be paid to the employee's dependents  
3 directly or to the employee's legal representatives if the employee left no  
4 dependent, but the liability of the employer for the payments of  
5 compensation not yet due at the time of the death of such employee shall  
6 cease and be abrogated by the employee's death.

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

12 (d) Where a minor employee or a minor employee's dependents are  
13 entitled to compensation under the workers compensation act, such  
14 compensation shall be exclusive of all other remedies or causes of action  
15 for such injury or death, and no claim or cause of action against the  
16 employer shall inure or accrue to or exist in favor of the parent or parents  
17 of such minor employee on account of any damage resulting to such parent  
18 or parents on account of the loss of earnings or loss of service of such  
19 minor employee.

20 (e) In any case of injury to or death of an employee, where the  
21 employee or the employee's dependents are entitled to compensation under  
22 the workers compensation act, such compensation shall be exclusive of all  
23 other remedies or causes of action for such injury or death, and no claim or  
24 action shall inure, accrue to or exist in favor of the surviving spouse or any  
25 relative or next of kin of such employee against such employer on account  
26 of any damage resulting to such surviving spouse or any relative or next of  
27 kin on account of the loss of earnings, services, or society of such  
28 employee or on any other account resulting from or growing out of the  
29 injury or death of such employee.

30 Sec. 8. K.S.A. 44-510f is hereby amended to read as follows: 44-  
31 510f. (a) Notwithstanding any provision of the workers compensation act  
32 to the contrary, the maximum compensation benefits payable by an  
33 employer shall not exceed the following:

34 (1) For permanent total disability, including temporary total,  
35 temporary partial, permanent partial and temporary partial disability  
36 payments paid or due, ~~\$155,000~~ \$400,000 for an injury;

37 (2) for temporary total disability, including any prior permanent total,  
38 permanent partial or temporary partial disability payments paid or due,  
39 ~~\$130,000~~ \$225,000 for an injury;

40 (3) subject to the provisions of subsection (a)(4), for permanent or  
41 temporary partial disability, including any prior temporary total, permanent  
42 total, temporary partial, or permanent partial disability payments paid or  
43 due, ~~\$130,000~~ \$225,000 for an injury; and

1 (4) for permanent partial disability, where functional impairment only  
 2 is awarded, ~~\$75,000~~ \$100,000 for an injury. The ~~\$75,000~~ \$100,000 cap  
 3 contained in this subsection shall apply whether or not temporary total  
 4 disability or temporary partial disability benefits were paid.

5 (b) *The maximum compensation benefits payable as provided by*  
 6 *subsection (a)(1) through (4) shall remain in effect until June 30, 2027.*  
 7 *Beginning on July 1, 2027, and each July 1 thereafter, the maximum*  
 8 *compensation benefits payable pursuant to subsection (a)(1) through (4)*  
 9 *shall be adjusted to reflect changes in the state average weekly wage. To*  
 10 *determine the yearly adjustment, the director shall determine the*  
 11 *percentage of change in the state average weekly wage determined for the*  
 12 *current year pursuant to K.S.A. 44-704, and amendments thereto, and as*  
 13 *the percentage change in the state average weekly wage for each of the*  
 14 *prior four years. Each year's percentage change in the state average*  
 15 *weekly wage shall be added together. The sum shall then be divided by five*  
 16 *to arrive at the average percentage change over the five-year period. The*  
 17 *maximum compensation benefits payable shall then be adjusted by such*  
 18 *average percentage change.*

19 (c) If an employer shall voluntarily pay unearned wages to an  
 20 employee in addition to any amount of disability benefits to which the  
 21 employee is entitled under the workers compensation act, the excess  
 22 amount paid:

23 (1) Shall be allowed as a credit to the employer in any final  
 24 settlement; or

25 (2) may be withheld from the employee's wages in weekly amounts  
 26 equal to the weekly amount or amounts paid in excess of compensation  
 27 due. The excess amount paid may only be withheld from the employee's  
 28 wages if the employee's average weekly wage for the calendar year  
 29 exceeds 125% of the state's average weekly wage, determined as provided  
 30 in K.S.A. 44-511, and amendments thereto.

31 Sec. 9. K.S.A. 44-510h is hereby amended to read as follows: 44-  
 32 510h. (a) It shall be the duty of the employer to provide the services of a  
 33 healthcare provider and such medical, surgical and hospital treatment,  
 34 including nursing, medicines, medical and surgical supplies, ambulance,  
 35 crutches, apparatus and transportation to and from the home of the injured  
 36 employee to a place outside the community in which such employee  
 37 resides and within such community if the director, in the director's  
 38 discretion, so orders, including transportation expenses computed in  
 39 accordance with K.S.A. 44-515(a), and amendments thereto, as may be  
 40 reasonably necessary to cure and relieve the employee from the effects of  
 41 the injury.

42 (b) (1) If the director finds, upon application of an injured employee,  
 43 that the services of the healthcare provider furnished as provided in

1 subsection (a) and rendered on behalf of the injured employee are not  
2 satisfactory, the director may authorize the appointment of some other  
3 healthcare provider. In any such case, the employer shall submit the names  
4 of two healthcare providers who, if possible given the availability of local  
5 healthcare providers, are not associated in practice together. The injured  
6 employee may select one from the list who shall be the authorized treating  
7 healthcare provider. If the injured employee is unable to obtain satisfactory  
8 services from any of the healthcare providers submitted by the employer  
9 under this paragraph, either party or both parties may request the director  
10 to select a treating healthcare provider.

11 (2) Without application or approval, an employee may consult a  
12 healthcare provider of the employee's choice for the purpose of  
13 examination, diagnosis or treatment, but the employer shall only be liable  
14 for the fees and charges of such healthcare provider up to a total amount of  
15 ~~\$500~~ \$800. The amount allowed for such examination, diagnosis or  
16 treatment shall not be used to obtain a functional impairment rating. Any  
17 medical opinion obtained in violation of this prohibition shall not be  
18 admissible in any claim proceedings under the workers compensation act.

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

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

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

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

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

34 (5) the employer or insurance carrier that made an agreement under  
35 paragraph (1) or (3) may withdraw from the agreement on 10 days' written  
36 notice.

37 (d) In any employment to which the workers compensation act  
38 applies, the employer shall be liable to each employee who is employed as  
39 a duly authorized law enforcement officer, firefighter, an emergency  
40 medical service provider as defined in K.S.A. 65-6112, and amendments  
41 thereto, or a member of a regional emergency medical response team as  
42 provided in K.S.A. 48-928, and amendments thereto, including any person  
43 who is serving on a volunteer basis in such capacity, for all reasonable and

1 necessary preventive medical care and treatment for hepatitis to which  
2 such employee is exposed under circumstances arising out of and in the  
3 course of employment.

4 (e) (1) It is presumed that the employer's obligation to provide the  
5 services of a healthcare provider and such medical, surgical and hospital  
6 treatment, including nursing, medicines, medical and surgical supplies,  
7 ambulance, crutches, apparatus and transportation to and from the home of  
8 the injured employee to a place outside the community in which such  
9 employee resides and within such community if the director, in the  
10 director's discretion, so orders, including transportation expenses  
11 computed in accordance with K.S.A. 44-515(a), and amendments thereto,  
12 shall terminate upon the employee reaching maximum medical  
13 improvement. ~~Such~~

14 (2) *If the employee has undergone an invasive or surgical procedure*  
15 *or an authorized treating healthcare provider recommends that the*  
16 *employee will need an invasive or surgical procedure in the future, the*  
17 *presumption in subsection (e)(1) as to termination of the right to medical*  
18 *treatment may be overcome with medical evidence that it is more probably*  
19 *true than not that additional future medical treatment will be necessary*  
20 *needed after such time as the employee reaches maximum medical*  
21 *improvement.*

22 (3) *In all other cases, such presumption to terminate the right to*  
23 *medical treatment provided by the employer may be overcome only with*  
24 *clear and convincing evidence of the need for future medical treatment.*

25 (4) As used in this subsection, "medical treatment" means only that  
26 treatment provided or prescribed by a licensed healthcare provider and  
27 shall not include home exercise programs or over-the-counter medications.

28 Sec. 10. K.S.A. 44-510k is hereby amended to read as follows: 44-  
29 510k. (a) (1) At any time after the entry of an award for compensation  
30 wherein future medical benefits were awarded, the employee, employer or  
31 insurance carrier may make application for a hearing, in such form as the  
32 director may require for the furnishing, termination or modification of  
33 medical treatment. Such post-award hearing shall be held by the assigned  
34 administrative law judge, in any county designated by the administrative  
35 law judge, and the judge shall conduct the hearing as provided in K.S.A.  
36 44-523, and amendments thereto.

37 (2) *Proceedings for post-award medical benefits shall proceed only*  
38 *under the provisions set forth in this section. Post-award medical benefits*  
39 *shall not be pursued or ordered under the procedures set forth in K.S.A.*  
40 *44-534a, and amendments thereto.*

41 (3) The administrative law judge ~~can~~ may:

42 (A) make an award for further medical care if the administrative law  
43 judge finds that it is more probably true than not that the injury which was

1 the subject of the underlying award is the prevailing factor in the need for  
2 further medical care and that the care requested is necessary to cure or  
3 relieve the effects of such injury, or

4 (B) terminate or modify an award of current or future medical care if  
5 the administrative law judge finds that no further medical care is required,  
6 the injury which was the subject of the underlying award is not the  
7 prevailing factor in the need for further medical care, or that the care  
8 requested is not necessary to cure or relieve the effects of such injury.

9 ~~(3)(4)~~ If the claimant has not received medical treatment, as defined  
10 in ~~subsection (e) of K.S.A. 44-510h(e)~~, and amendments thereto, from an  
11 authorized ~~health care~~ *healthcare* provider within two years from the date  
12 of the award or two years from the date the claimant last received medical  
13 treatment from an authorized ~~health care~~ *healthcare* provider, the employer  
14 shall be permitted to make application under this section for permanent  
15 termination of future medical benefits. In such case, there shall be a  
16 presumption that no further medical care is needed as a result of the  
17 underlying injury. The presumption may be overcome by competent  
18 medical evidence.

19 ~~(4)(5)~~ No post-award benefits shall be ordered, modified or  
20 terminated without giving all parties to the award the opportunity to  
21 present evidence, including taking testimony on any disputed matters. A  
22 finding with regard to a disputed issue shall be subject to a full review by  
23 the board under ~~subsection (b) of K.S.A. 44-551(b)~~, and amendments  
24 thereto. Any action of the board pursuant to post-award orders shall be  
25 subject to review under K.S.A. 44-556, and amendments thereto.

26 (b) (1) Any application for hearing made pursuant to this section shall  
27 receive priority setting by the administrative law judge, only superseded  
28 by preliminary hearings pursuant to K.S.A. 44-534a, and amendments  
29 thereto.

30 (2) *The application for hearing pursuant to this section shall, with*  
31 *specificity, identify the post-award medical benefit being sought. If the*  
32 *employer or insurance carrier provides the requested benefit within 30*  
33 *days of receipt of the application, it shall be presumed that no costs or*  
34 *attorney fees shall be awarded. Such presumption may be overcome by*  
35 *clear and convincing evidence that the attorney pursuing post-award*  
36 *medical benefits expended significant time or resources in obtaining such*  
37 *benefits.*

38 (3) The parties shall meet and confer prior to the hearing pursuant to  
39 this section, but a prehearing settlement conference shall not be necessary.  
40 The administrative law judge shall have authority to award medical  
41 treatment relating back to the entry of the underlying award, but in no  
42 event shall such medical treatment relate back more than six months  
43 following the filing of such application for post-award medical treatment.

1 Reviews taken under this section shall receive priority settings before the  
2 board, only superseded by reviews for preliminary hearings. A decision  
3 shall be rendered by the board within 30 days from the time the review  
4 ~~hereunder~~ is submitted.

5 (c) The administrative law judge may award attorney fees and costs  
6 on the claimant's behalf consistent with ~~subsection (g)~~ of K.S.A. 44-  
7 536(g), and amendments thereto. As used in this subsection, "costs"  
8 include, but are not limited to, witness fees, mileage allowances, any costs  
9 associated with reproduction of documents that become a part of the  
10 hearing record, the expense of making a record of the hearing and such  
11 other charges as are by statute authorized to be taxed as costs.

12 Sec. 11. K.S.A. 44-511 is hereby amended to read as follows: 44-511.

13 (a) As used in this section:

14 (1) The term "money" shall be construed to mean the gross  
15 remuneration, on an hourly, output, salary, commission or other basis  
16 earned while employed by the employer, including *sick, vacation or other*  
17 *paid time off*, bonuses and gratuities. Money shall not include any  
18 additional compensation, as defined in paragraph (2).

19 (2) (A) The term "additional compensation" shall include and mean  
20 only the following: (i) Board and lodging when furnished by the employer  
21 as part of the wages, which shall be valued at a maximum of \$25 per week  
22 for board and lodging combined, unless the value has been fixed otherwise  
23 by the employer and employee prior to the date of the accident or injury, or  
24 unless a higher weekly value is proved; and (ii) employer-paid life  
25 insurance, disability insurance, health and accident insurance and  
26 employer contributions to pension and profit sharing plans.

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

30 (C) Additional compensation shall not be included in the calculation  
31 of average wage until and unless such additional compensation is  
32 discontinued. If such additional compensation is discontinued subsequent  
33 to a computation of average weekly wages under this section, there shall  
34 be a recomputation to include such discontinued additional compensation.

35 (3) The term "wage" shall be construed to mean the total of the  
36 money and any additional compensation that the employee receives for  
37 services rendered for the employer in whose employment the employee  
38 sustains an injury arising out of and in the course of such employment.

39 (b) (1) Unless otherwise provided, the employee's average weekly  
40 wage for the purpose of computing any compensation benefits provided by  
41 the workers compensation act shall be the wages the employee earned  
42 during the calendar weeks employed by the employer, up to 26 calendar  
43 weeks immediately preceding the date of the injury, divided by the number

1 of calendar weeks the employee actually worked, or by 26 as the case may  
2 be.

3 (2) *If the employee worked less than the employee's expected weekly*  
4 *schedule during the first week of employment, such week shall not be*  
5 *included in the calculation of the employee's average weekly wage.*

6 (3) If actually employed by the employer for less than one calendar  
7 week immediately preceding the accident or injury, the average weekly  
8 wage shall be determined by the administrative law judge based upon all  
9 of the evidence and circumstances, including the usual wage for similar  
10 services paid by the same employer, or if the employer has no employees  
11 performing similar services, the usual wage paid for similar services by  
12 other employers. The average weekly wage so determined shall not exceed  
13 the actual average weekly wage the employee was reasonably expected to  
14 earn in the employee's specific employment, including the average weekly  
15 value of any additional compensation.

16 ~~(3)~~(4) The average weekly wage of an employee who performs the  
17 same or a very similar type of work on a part-time basis for each of two or  
18 more employers, shall be the sum of the average weekly wages of such  
19 employee paid by each of the employers.

20 ~~(4)~~(5) In determining an employee's average weekly wage with  
21 respect to the employer against whom claim for compensation is made, no  
22 money or additional compensation paid to or received by the employee  
23 from such employer, or from any source other than from such employer,  
24 shall be included as wages, except as provided in this section. No wages,  
25 other compensation or benefits of any type, except as provided in this  
26 section, shall be considered or included in determining the employee's  
27 average weekly wage.

28 ~~(5)~~(6) (A) The average weekly wage of a person serving on a  
29 volunteer basis as a duly authorized law enforcement officer, emergency  
30 medical service provider as provided in K.S.A. 44-508, and amendments  
31 thereto, firefighter or member of a regional emergency medical response  
32 team as provided in K.S.A. 48-928, and amendments thereto, who receives  
33 no wages for such services, or who receives wages that are substantially  
34 less than the usual wages paid for such services by comparable employers  
35 to employees who are not volunteers, shall be computed on the basis of the  
36 dollar amount closest to, but not exceeding, 112½% of the state average  
37 weekly wage.

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

40 (C) The average weekly wage of a volunteer member of the Kansas  
41 department of civil air patrol officially engaged in the performance of  
42 functions specified in K.S.A. 48-3302, and amendments thereto, shall be  
43 deemed to be \$476.38. Whenever the rates of compensation of the pay

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

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

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

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

42 Sec. 12. K.S.A. 44-512 is hereby amended to read as follows: 44-512.

43 (a) Workers compensation payments shall be made at the same time, place



1 and in the same manner as the wages of the worker were payable at the  
2 time of the accident, but upon the application of either party the  
3 administrative law judge may modify such requirements in a particular  
4 case as the administrative law judge deems just, except that:

5 ~~(a)~~(1) Payments from the workers compensation fund established by  
6 K.S.A. 44-566a, and amendments thereto, shall be made in the manner  
7 approved by the commissioner of insurance;

8 ~~(b)~~(2) payments from the state workers compensation self-insurance  
9 fund established by K.S.A. 44-575, and amendments thereto, shall be  
10 made in a manner approved by the secretary of health and environment;  
11 and

12 ~~(c)~~(3) whenever temporary total disability compensation is to be paid  
13 under the workers compensation act, payments shall be made only in cash,  
14 by check or in the same manner that the employee is normally  
15 compensated for salary or wages, *or if the parties agree, by electronic*  
16 *funds transfer or a payment card*, and not by any other means, except that  
17 any such compensation may be paid by warrant of the director of accounts  
18 and reports issued for payment of such compensation from the workers  
19 compensation fund or the state workers compensation self-insurance fund  
20 under the workers compensation act.

21 *(b) When allowed pursuant to the provisions of subsection (a)(1)*  
22 *through (3), if compensation is being paid by electronic funds transfer to*  
23 *the injured worker's account or compensation is being paid by a payment*  
24 *card issued to the injured worker and the injured worker is represented by*  
25 *an attorney, the employer shall notify the injured worker's attorney each*  
26 *time payment is made.*

27 Sec. 13. K.S.A. 44-515 is hereby amended to read as follows: 44-515.

28 (a) After an employee sustains an injury, the employee shall, upon request  
29 of the employer, submit to an examination at any reasonable time and  
30 place by any one or more reputable ~~health-care~~ *healthcare* providers,  
31 selected by the employer, and shall so submit to an examination thereafter  
32 at intervals during the pendency of such employee's claim for  
33 compensation, upon the request of the employer, but the employee shall  
34 not be required to submit to an examination ~~often~~ *more* than twice in any  
35 one month, unless required to do so in accordance with such orders as may  
36 be made by the director. All benefits shall be suspended to an employee  
37 who refuses to submit to such examination or examinations until such time  
38 as the employee complies with the employer's request. The suspension of  
39 benefits shall occur even if the employer is under preliminary order to  
40 provide such benefits. Any employee so submitting to an examination or  
41 such employee's authorized representative shall upon written request be  
42 entitled to receive and shall have delivered to such employee a copy of the  
43 ~~health-care~~ *healthcare* provider's report of such examination within a

1 reasonable amount of time after such examination, ~~which~~. *Such* report  
2 shall be identical to the report submitted to the employer. If the employee  
3 is notified to submit to an examination before any ~~health-care~~ *healthcare*  
4 provider in any town or city other than the residence of the employee at  
5 the time that the employee received an injury, the employee shall not be  
6 required to submit to an examination until such employee has been  
7 furnished with sufficient funds to pay for transportation to and from the  
8 place of examination at the rate prescribed for compensation of state  
9 officers and employees under K.S.A. 75-3203a, and amendments thereto,  
10 for each mile actually and necessarily traveled to and from the place of  
11 examination; *and* any turnpike or other tolls and any parking fees actually  
12 and necessarily incurred; ~~and~~. *The employer shall also be responsible for*  
13 *reimbursement of the reasonable expenses for overnight accommodations*  
14 *as needed to avoid undue hardship on the employee.* In addition, *the*  
15 *employer shall be liable for* the sum of ~~\$15~~ \$30 per day for each full day  
16 that the employee was required to be away from such employee's residence  
17 to defray such employee's ~~board and lodging and living meal~~ expenses.  
18 The employee shall not be liable for any fees or charge of any ~~health-care~~  
19 *healthcare* provider selected by the employer for making any examination  
20 of the employee. The employer or the insurance carrier of the employer of  
21 any employee making claim for compensation under the workers  
22 compensation act shall be entitled to a copy of the report of any ~~health-care~~  
23 *healthcare* provider who has examined or treated the employee in regard  
24 to such claim upon written request to the employee or the employee's  
25 attorney within a reasonable amount of time after such examination or  
26 treatment, ~~which~~. *Such* report shall be identical to the report submitted to  
27 the employee or the employee's attorney.

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

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

39 (d) Except as provided in this section, there shall be no  
40 disqualification or privilege preventing the furnishing of reports by or the  
41 testimony of any ~~health-care~~ *healthcare* provider who actually makes an  
42 examination or treats an injured employee, prior to or after an injury.

43 (e) Any ~~health-care~~ *healthcare* provider's opinion, whether the

1 provider is a treating ~~health care~~ *healthcare* provider or is an examining  
2 ~~health care~~ *healthcare* provider, regarding a claimant's need for medical  
3 treatment, inability to work, prognosis, diagnosis and disability rating shall  
4 be considered and given appropriate weight by the trier of fact together  
5 with consideration of all other evidence.

6 Sec. 14. K.S.A. 44-516 is hereby amended to read as follows: 44-516.

7 ~~(a) In case of a dispute as to the injury, Prior to the commencement of a~~  
8 ~~prehearing settlement conference as required by K.S.A. 44-523(c), and~~  
9 ~~amendments thereto, if the parties have not agreed upon a neutral~~  
10 ~~healthcare examination or a neutral healthcare provider pursuant to~~  
11 ~~subsection (c), the director, in the director's discretion, or upon request of~~  
12 ~~either party, administrative law judge may employ appoint one or more~~  
13 ~~neutral health care providers, not exceeding three in number healthcare~~  
14 ~~provider, who shall be of good standing and ability, to address diagnosis,~~  
15 ~~treatment recommendations and temporary restrictions of the injury. The~~  
16 ~~health care providers neutral healthcare provider selected by the~~  
17 ~~administrative law judge pursuant to this section shall make such~~  
18 ~~examinations examination of the injured employee as the director may~~  
19 ~~direct and shall issue a written report that shall be admitted into evidence~~  
20 ~~in the matter without additional foundation. The report of any such health~~  
21 ~~care~~

22 ~~(b) The appointed neutral healthcare provider shall be considered by~~  
23 ~~the administrative law judge in making the final determination not address~~  
24 ~~the injured worker's permanent restrictions, impairment, permanent~~  
25 ~~partial disability, job task loss, wage loss or permanent total disability~~  
26 ~~status in any written report pursuant to subsection (a). Nothing in this~~  
27 ~~section shall prevent the appointed neutral healthcare provider from~~  
28 ~~addressing these issues if such healthcare provider is subsequently~~  
29 ~~designated as the authorized treating healthcare provider.~~

30 ~~(b) If at least two medical opinions based on competent medical~~  
31 ~~evidence disagree as to the percentage of functional impairment, such~~  
32 ~~matter may~~

33 ~~(c) Nothing in this section shall prevent the parties from agreeing to a~~  
34 ~~neutral healthcare examination by a neutral healthcare provider who shall~~  
35 ~~be referred by the administrative law judge to an independent health care~~  
36 ~~appointed by the administrative law judge. The neutral healthcare~~  
37 ~~provider who shall be agreed upon by the parties shall issue a written~~  
38 ~~report who shall be admitted into evidence in such matter without~~  
39 ~~additional foundation. Where the parties cannot agree, an independent~~  
40 ~~healthcare~~

41 ~~(d) Any charges or costs levied by the neutral healthcare provider~~  
42 ~~shall be selected by the administrative law judge. due to unreasonable late~~  
43 ~~cancellation or missed appointment with the health care neutral healthcare~~

1 provider agreed to by the parties or selected may be taxed by the  
2 administrative law judge pursuant to this section shall issue an opinion  
3 regarding *against the party responsible for the employee's functional*  
4 *impairment which shall be considered by the administrative law judge in*  
5 *making the final determination cancellation or missed appointment.*

6 Sec. 15. K.S.A. 44-519 is hereby amended to read as follows: 44-519.

7 (a) Except in preliminary hearings conducted under K.S.A. 44-534a, and  
8 amendments thereto, *or as provided by subsection (c), (d), (e) or (f)*, no  
9 report of any examination of any employee by a ~~health care~~ *healthcare*  
10 provider, as provided for in the workers compensation act and no  
11 certificate issued or given by the ~~health care~~ *healthcare* provider making  
12 such examination, shall be competent evidence in any proceeding for the  
13 determining or collection of compensation unless supported by the  
14 testimony of such ~~health care~~ *healthcare* provider, if this testimony is  
15 admissible, and shall not be competent evidence in any case where  
16 testimony of such ~~health care~~ *healthcare* provider is not admissible.

17 (b) *Except for hearings conducted under K.S.A. 44-534a, and*  
18 *amendments thereto, upon receipt of notice from the division setting a date*  
19 *for hearing of a case, the parties or their attorneys shall arrange, without*  
20 *charge or costs, each to the other, for an exchange of all medical reports,*  
21 *including those made both by treating and examining healthcare*  
22 *providers, to the end that the parties may be commonly informed of all*  
23 *medical findings and opinions. The exchange of medical reports shall be*  
24 *made at least 30 days before the date set for the hearing. The failure of*  
25 *any party to comply may be grounds for the administrative law judge to*  
26 *grant a party's request for additional time to present evidence.*

27 (c) *The testimony of a treating or examining healthcare provider may*  
28 *be submitted in evidence on the issues in controversy by a complete*  
29 *medical report and shall be admissible without other foundational*  
30 *evidence subject to compliance with the following procedures:*

31 (1) *The party intending to submit the complete medical report in*  
32 *evidence shall give notice to all parties at least 30 days prior to the*  
33 *hearing and shall provide a reasonable opportunity to all parties to cross-*  
34 *examine the healthcare provider who prepared the report within the*  
35 *offering party's terminal date. Each party shall compensate the healthcare*  
36 *provider for the portion of testimony obtained in an amount not to exceed*  
37 *a rate of reasonable compensation consistent with the Kansas medical fee*  
38 *schedule;*

39 (2) *the notice required in paragraph (1) shall include a copy of the*  
40 *curriculum vitae of the healthcare provider who prepared the complete*  
41 *medical report, the complete medical report and all the clinical and*  
42 *treatment records of the healthcare provider;*

43 (3) *the notice required in paragraph (1) shall also include copies of*

1 *all records and reports received from any other source including all*  
2 *records and reports of other healthcare providers that the preparer of the*  
3 *complete medical report reviewed and relied upon in issuing the report.*  
4 *The copies of records and reports shall include, but not be limited to, all*  
5 *paper or media documents, videos, transcribed statements or sworn*  
6 *testimony reviewed and relied upon by the preparer of the complete*  
7 *medical report, except that for purposes of this paragraph, the copies of*  
8 *records and reports shall not include X-rays or other diagnostic studies;*  
9 *and*

10 *(4) at the request of any party, the party offering a complete medical*  
11 *report in evidence shall also make available copies of X-rays or other*  
12 *diagnostic studies obtained by or relied upon by the healthcare provider.*

13 *(d) Any dispute by a party as to whether a complete medical report*  
14 *offered by another party meets the requirements of a complete medical*  
15 *report shall be made within 10 days after receipt of the notice required by*  
16 *subsection (c) by providing written objections to the offering party stating*  
17 *the grounds for the dispute. Upon request of any party, the administrative*  
18 *law judge shall rule upon such objections at the hearing and determine*  
19 *whether the report meets the requirements of a complete medical report*  
20 *and the admissibility of the report. The 10-day rule may be extended for*  
21 *good cause. If no objections are made the report shall be admissible and*  
22 *any objections thereto shall be waived.*

23 *(e) Medical records or reports of other healthcare providers that*  
24 *were considered by the preparer of a complete medical report that has*  
25 *been received into evidence may also be admitted without further*  
26 *foundations subject to compliance with the following procedures:*

27 *(1) Such medical reports or records of such other healthcare*  
28 *providers have been certified by the offices of such healthcare providers,*  
29 *or the records custodians of such offices, as to the number of pages in the*  
30 *records and that such records are true and correct copies of the original*  
31 *records and are kept in the normal course of business of such healthcare*  
32 *providers; and*

33 *(2) the offered medical records or reports are limited to the*  
34 *examination and treatment of the same structure or structures as the*  
35 *injured worker's body part that was alleged to have been injured as a*  
36 *result of the work accident or repetitive trauma.*

37 *(f) Nothing in this section shall prevent the parties from agreeing to*  
38 *admit medical reports or records by consent.*

39 *Sec. 16. K.S.A. 44-520 is hereby amended to read as follows: 44-520.*  
40 *(a) (1) Proceedings for compensation under the workers compensation act*  
41 *shall not be maintainable unless notice of injury by accident or repetitive*  
42 *trauma is given to the employer, either orally or in writing as provided by*  
43 *paragraph (2) or (3), by the earliest of the following dates:*

1 (A) 2030 calendar days from the date of accident or the date of injury  
2 by repetitive trauma; *or*

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

7 ~~(C) if the employee no longer works for~~ *is employed with* the  
8 employer against whom benefits are being sought, ~~to~~ 20 calendar days  
9 after the employee's last day of ~~actual work for employment with~~ the  
10 employer.

11 ~~Notice may be given orally or in writing.~~

12 (2) Where notice is provided orally, if the employer has designated an  
13 individual or department to whom notice must be given and such  
14 designation has been communicated in writing to the employee, notice to  
15 any other individual or department shall be insufficient under this section.  
16 If the employer has not designated an individual or department to whom  
17 notice must be given, notice must be provided to a supervisor or manager.

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

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

27 (b) The notice required by subsection (a) shall be waived if the  
28 employee proves that:

29 (1) The employer or the employer's duly authorized agent had actual  
30 knowledge of the injury;

31 (2) the employer or the employer's duly authorized agent was  
32 unavailable to receive such notice within the applicable period as provided  
33 in ~~paragraph (1) of subsection (a)~~ *subsection (a)(1)(A) or (B)*; or

34 (3) the employee was physically unable to give such notice.

35 (c) For the purposes of calculating the notice period proscribed in  
36 ~~subsection (a) subsection (a)(1)(A) or (B)~~, weekends shall be included.

37 Sec. 17. K.S.A. 44-523 is hereby amended to read as follows: 44-523.

38 (a) The director, administrative law judge or board shall not be bound by  
39 technical rules of procedure, but shall give the parties reasonable  
40 opportunity to be heard and to present evidence, ensure the employee and  
41 the employer an expeditious hearing and act reasonably without partiality.

42 (b) Whenever a party files an application for ~~hearing~~ *benefits*  
43 pursuant to K.S.A. 44-534, and amendments thereto, the matter shall be

1 assigned to an administrative law judge for hearing and the administrative  
2 law judge shall set a terminal date to require the claimant to submit all  
3 evidence in support of the claimant's claim no later than 30 days after the  
4 first full hearing before the administrative law judge and to require the  
5 respondent to submit all evidence in support of the respondent's position  
6 no later than 30 days thereafter. An extension of the foregoing time limits  
7 shall be granted if all parties agree. An extension of the foregoing time  
8 limits may also be granted:

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

11 (2) for medical examination of the claimant if the party requesting the  
12 extension explains in writing to the administrative law judge facts showing  
13 that the party made a diligent effort but was unable to have a medical  
14 examination conducted prior to the submission of the case by the claimant  
15 but then only if the examination appointment was set and notice of the  
16 appointment sent prior to submission by the claimant; or

17 (3) on application for good cause shown.

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

30 (d) Not less than 10 days prior to the first full hearing before an  
31 administrative law judge, the administrative law judge shall conduct a  
32 prehearing settlement conference for the purpose of obtaining stipulations  
33 from the parties, determining the issues and exploring the possibility that  
34 the parties may resolve those issues and reach a settlement prior to the first  
35 full hearing.

36 (e) (1) If a party or a party's attorney believes that the administrative  
37 law judge to whom a case is assigned cannot afford that party a fair  
38 hearing in the case, the party or attorney may file a motion for change of  
39 administrative law judge. A party or a party's attorney shall not file more  
40 than one motion for change of administrative law judge in a case. The  
41 administrative law judge shall promptly hear the motion informally upon  
42 reasonable notice to all parties who have appeared in the case.  
43 Notwithstanding the provisions of K.S.A. 44-552, and amendments

1 thereto, the administrative law judge shall decide, in the administrative law  
2 judge's discretion, whether or not the hearing of such motion shall be taken  
3 down by a certified shorthand reporter. If the administrative law judge  
4 disqualifies the administrative law judge's self, the case shall be assigned  
5 to another administrative law judge by the director. If the administrative  
6 law judge refuses to disqualify the administrative law judge's self, the  
7 party seeking a change of administrative law judge may, within 10 days of  
8 the refusal, file an appeal with the workers compensation *appeals* board.

9 (2) The party or a party's attorney shall file with the workers  
10 compensation *appeals* board an affidavit alleging one or more of the  
11 grounds specified in subsection (e)(4).

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

15 (4) Grounds which may be alleged as provided in subsection (e)(2)  
16 for change of administrative law judge are that:

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

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

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

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

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

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

33 (6) Notwithstanding the provisions of K.S.A. 44-556, and  
34 amendments thereto, no interlocutory appeal to the court of appeals of the  
35 workers compensation appeals board's decision regarding recusal shall be  
36 allowed while the resolution of the claim for compensation is pending  
37 before an administrative law judge or the workers compensation appeals  
38 board.

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



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

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

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

26 Sec. 18. K.S.A. 44-525 is hereby amended to read as follows: 44-525.

27 (a) Every finding or award of compensation shall be in writing, signed and  
28 acknowledged by the administrative law judge and shall specify the  
29 amount due and unpaid by the employer to the employee up to the date of  
30 the award, if any, and the amount of the payments thereafter to be paid by  
31 the employer to the employee, if any, and the length of time such payment  
32 shall continue. No award shall include the right to future medical  
33 treatment, ~~unless it is proved by the claimant that it is more probable than~~  
34 ~~not that future medical treatment, as defined in subsection (e) establishes~~  
35 ~~the requirements of K.S.A. 44-510h(e), and amendments thereto, will be~~  
36 ~~required as a result of the work-related injury.~~ The award of the  
37 administrative law judge shall be effective the day following the date  
38 noted in the award.

39 (b) No award shall be or provide for payment of compensation in a  
40 lump sum, except as to such portion of the compensation as shall be found  
41 to be due and unpaid at the time of the award, or except at the discretion of  
42 the director on settlement agreements, and credit shall be given to the  
43 employer in such award for any amount or amounts paid by the employer

1 to the employee as compensation prior to the date of the award.

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

9 Sec. 19. K.S.A. 44-526 is hereby amended to read as follows: 44-526.  
10 Any award of compensation may be modified by subsequent written  
11 agreement of the parties, but no such agreement modifying an award shall  
12 be valid as against the ~~workman~~ *claimant* unless such agreement or a copy  
13 thereof ~~be is~~ filed by the employer in the office of the director within ~~sixty~~  
14 ~~(60)~~ 60 days after the execution of such agreement.

15 Sec. 20. K.S.A. 44-531 is hereby amended to read as follows: 44-531.  
16 (a) Where all parties agree to the payment of all or any part of  
17 compensation due under the workers compensation act or under any award  
18 or judgment, and where it has been determined at a hearing *or by approval*  
19 *of terms of a settlement award on written stipulation pursuant to*  
20 *subsection (d)* before the administrative law judge that it is for the best  
21 interest of the injured employee or the dependents of a deceased employee,  
22 or that it will avoid undue expense, litigation or hardship to any party or  
23 parties, the administrative law judge may permit the employer to redeem  
24 all or any part of the employer's liability under the workers compensation  
25 act by the payment of compensation in a lump-sum. The employer shall be  
26 entitled to an 8% discount except as provided in ~~subsection (a)~~ of K.S.A.  
27 44-510b(a), and amendments thereto, on the amount of any such lump-  
28 sum payment that is not yet due at the time of the award. Upon paying  
29 such lump-sum the employer shall be released and discharged of and from  
30 all liability under the workers compensation act for that portion of the  
31 employer's liability redeemed under this section.

32 (b) No lump-sum awards, unless agreed to by the parties, shall be  
33 rendered under the workers compensation act except: (1) As provided in  
34 subsection (a) of this section, (2) as provided in ~~subsection (a)~~ K.S.A. 44-  
35 510b(a), and amendments thereto, (3) in cases involving compensation due  
36 the employee at the time the award is rendered as provided in K.S.A. 44-  
37 525, and amendments thereto, and in cases of past due compensation as  
38 provided in K.S.A. 44-529, and amendments thereto.

39 (c) The parties, by agreement and with approval of an administrative  
40 law judge, may enter into a compromise lump-sum settlement in either  
41 permanent total or permanent partial disability cases which prorates the  
42 lump-sum settlement over the life expectancy of the injured worker. When  
43 such an agreement has been approved, neither the weekly compensation

1 rate paid throughout the case nor the maximum statutory weekly rate  
2 applicable to the injury shall apply. No compensation rate shall exceed the  
3 maximum statutory weekly rate as of the date of the injury. Instead, the  
4 prorated rate set forth in the approved settlement documents shall control  
5 and become the rate for that case. This section shall be retroactive in  
6 effect.

7 *(d) When both parties are represented by legal counsel and the*  
8 *claimant is over 18 years of age, a settlement may occur by settlement*  
9 *award on written stipulation on a form established by the director of*  
10 *workers compensation. The administrative law judge assigned to the*  
11 *matter shall approve or reject the settlement award on written stipulations*  
12 *within five business days of the electronic filing of the settlement award by*  
13 *the parties.*

14 Sec. 21. K.S.A. 44-534a is hereby amended to read as follows: 44-  
15 534a. (a) (1) After an application for a hearing has been filed pursuant to  
16 K.S.A. 44-534, and amendments thereto, the employee or the employer  
17 may make application for a preliminary hearing, in such form as the  
18 director may require, on the issues of the furnishing of medical treatment  
19 and the payment of temporary total or temporary partial disability  
20 compensation. At least seven days prior to filing an application for a  
21 preliminary hearing, the applicant shall give written notice to the adverse  
22 party of the intent to file such an application. Such notice of intent shall  
23 contain a specific statement of the benefit change being sought that is to be  
24 the subject of the requested preliminary hearing. If the parties do not agree  
25 to the change of benefits within the seven-day period, the party seeking a  
26 change in benefits may file an application for preliminary hearing which  
27 shall be accompanied by a copy of the notice of intent and the applicant's  
28 certification that the notice of intent was served on the adverse party or  
29 that party's attorney and that the request for a benefit change has either  
30 been denied or was not answered within seven days after service. Copies  
31 of medical reports or other evidence which the party intends to produce as  
32 exhibits supporting the change of benefits shall be included with the  
33 application. The director shall assign the application to an administrative  
34 law judge who shall set the matter for a preliminary hearing and shall give  
35 at least seven days' written notice by mail to the parties of the date set for  
36 such hearing.

37 *(2) Upon receipt of notice of hearing from the division of workers*  
38 *compensation setting a date for preliminary hearing, the parties or their*  
39 *attorneys shall arrange, without charge or costs, each to the other, for an*  
40 *exchange of all medical reports, including those made by healthcare*  
41 *providers, to the end that the parties may be commonly informed of all*  
42 *medical findings and opinions. The exchange of medical reports shall be*  
43 *made at least 20 days before the date of the preliminary hearing. The*

1 *failure of any party to comply may be grounds for the administrative law*  
2 *judge to grant a party's request for additional time to present evidence.*

3 (3) Such preliminary hearing shall be summary in nature and shall be  
4 held by an administrative law judge in any county designated by the  
5 administrative law judge, and the administrative law judge shall exercise  
6 such powers as are provided for the conduct of full hearings on claims  
7 under the workers compensation act. Upon a preliminary finding that the  
8 injury to the employee is compensable and in accordance with the facts  
9 presented at such preliminary hearing, the administrative law judge may  
10 make a preliminary award of medical compensation and temporary total  
11 disability compensation to be in effect pending the conclusion of a full  
12 hearing on the claim, except that if the employee's entitlement to medical  
13 compensation or temporary total disability compensation is disputed or  
14 there is a dispute as to the compensability of the claim, no preliminary  
15 award of benefits shall be entered without giving the employer the  
16 opportunity to present evidence, including testimony, on the disputed  
17 issues. A finding with regard to a disputed issue of whether the employee  
18 suffered an accident, repetitive trauma or resulting injury, whether the  
19 injury arose out of and in the course of the employee's employment,  
20 whether notice is given, or whether certain defenses apply, shall be  
21 considered jurisdictional, and subject to review by the board. Such review  
22 by the board shall not be subject to judicial review. If an appeal from a  
23 preliminary order is perfected under this section, such appeal shall not stay  
24 the payment of medical compensation and temporary total disability  
25 compensation from the date of the preliminary award. If temporary total  
26 compensation is awarded, such compensation may be ordered paid from  
27 the date of filing the application, except that if the administrative law  
28 judge finds from the evidence presented that there were one or more  
29 periods of temporary total disability prior to such filing date, temporary  
30 total compensation may be ordered paid for all periods of temporary total  
31 disability prior to such date of filing. The decision in such preliminary  
32 hearing shall be rendered within five days of the conclusion of such  
33 hearing. Except as provided in this section, no such preliminary findings or  
34 preliminary awards shall be appealable by any party to the proceedings,  
35 and the same shall not be binding in a full hearing on the claim, but shall  
36 be subject to a full presentation of the facts.

37 (b) If compensation in the form of medical benefits or temporary total  
38 disability benefits has been paid by the employer or the employer's  
39 insurance carrier either voluntarily or pursuant to an award entered under  
40 this section and, upon a full hearing on the claim, the amount of  
41 compensation to which the employee is entitled is found to be less than the  
42 amount of compensation paid or is totally disallowed, the employer and  
43 the employer's insurance carrier shall be reimbursed from the workers

1 compensation fund established in K.S.A. 44-566a, and amendments  
2 thereto, for all amounts of compensation so paid which are in excess of the  
3 amount of compensation the employee is entitled to less any amount  
4 deducted from additional disability benefits due the employee pursuant to  
5 ~~subsection (e) of~~ K.S.A. 44-525(c), and amendments thereto, as  
6 determined in the full hearing on the claim. The director shall determine  
7 the amount of compensation paid by the employer or insurance carrier  
8 which is to be reimbursed under this subsection, and the director shall  
9 certify to the commissioner of insurance the amount so determined. Upon  
10 receipt of such certification, the commissioner of insurance shall cause  
11 payment to be made to the employer or the employer's insurance carrier in  
12 accordance therewith. No reimbursement shall be certified unless the  
13 request is made by the employer or employer's insurance carrier within one  
14 year of the final award.

15 *(c) A party seeking post-award medical benefits shall not be*  
16 *permitted to use the procedures allowed by this section.*

17 Sec. 22. K.S.A. 44-552 is hereby amended to read as follows: 44-552.

18 (a) The director with the approval of the secretary of labor shall at each  
19 hearing under the workers compensation act appoint a certified shorthand  
20 reporter, who may be within the classified service of the Kansas civil  
21 service act, to attend each hearing where testimony is introduced, and  
22 preserve a complete record of all oral or documentary evidence introduced  
23 and all proceedings had at such hearing unless such appointment is waived  
24 by mutual agreement. *In the alternative, the director may cause such*  
25 *hearings to be recorded by digital recording or other comparable means.*  
26 At the conclusion of the hearing in any case, if neither party has requested  
27 opportunity to file briefs, the administrative law judge may read into the  
28 record for certification and filing in the office of the director such  
29 stipulations, findings, rulings or orders the administrative law judge deems  
30 expedient to the early disposition of the case. If the administrative law  
31 judge uses such procedure, with the consent of the parties, no transcript of  
32 the record of the hearing shall be made, except that part which is read into  
33 the record by the administrative law judge.

34 (b) All testimony introduced and proceedings had in hearings shall be  
35 taken down by the certified shorthand reporter, ~~and~~ *or recorded digitally*  
36 *or by other comparable means.* If an action for review is commenced or if  
37 the director, or either party or the best interests of the administration of  
38 justice, so instructs, the certified shorthand reporter shall transcribe the  
39 certified shorthand reporter's notes of such hearing. *If such hearing was*  
40 *recorded by digital recording or other comparable means, a certified*  
41 *shorthand reporter or notary public shall transcribe the recording and*  
42 *attest to its accuracy.* If an action for review is commenced, the cost of  
43 preparing a transcript shall be paid as provided by K.S.A. 77-620, and

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

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

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

19 Sec. 23. K.S.A. 44-566a is hereby amended to read as follows: 44-  
20 566a. (a) There is hereby created in the state treasury the workers  
21 compensation fund. The commissioner of insurance shall be responsible  
22 for administering the workers compensation fund, and all payments from  
23 the workers compensation fund shall be upon warrants of the director of  
24 accounts and reports issued pursuant to vouchers approved by the  
25 commissioner of insurance or a person or persons designated by the  
26 commissioner. The commissioner of insurance annually shall report to the  
27 governor and the legislature the receipts and disbursements from the  
28 workers compensation fund during the preceding fiscal year.

29 (b) (1) On June 1 of each year, the commissioner of insurance shall  
30 impose an assessment against all insurance carriers, self-insurers and  
31 group-funded workers compensation pools insuring the payment of  
32 compensation under the workers compensation act, and the same shall be  
33 due and payable to the commissioner on the following July 1, the proceeds  
34 of which shall be credited to the workers compensation fund. The total  
35 amount of each such assessment shall be equal to an amount sufficient, in  
36 the opinion of the commissioner of insurance, to pay all amounts,  
37 including attorney fees and costs, which may be required to be paid from  
38 such fund during the current fiscal year, less the amount of the estimated  
39 unencumbered balance in the workers compensation fund as of the June 30  
40 immediately preceding the date the assessment is due and payable under  
41 this section. The total amount of each such assessment shall be  
42 apportioned among those upon whom it is imposed, such that each is  
43 assessed an amount that bears the same relation to such total assessment as

1 the amount of money paid or payable in workers compensation claims by  
2 such insurance carrier, self-insurer or group-funded workers compensation  
3 pool in the immediately preceding calendar year bears to all such claims  
4 paid or payable during such calendar year. The commissioner of insurance  
5 may establish experience-based rates of assessments under this subsection  
6 and make adjustments in the assessments imposed under this subsection  
7 based on the success of accident prevention programs under K.S.A. 44-  
8 5,104, and amendments thereto, and other employer safety programs.

9 (2) The commissioner of insurance shall remit all moneys received by  
10 or for such commissioner under this subsection to the state treasurer in  
11 accordance with the provisions of K.S.A. 75-4215, and amendments  
12 thereto. Upon receipt of each such remittance, the state treasurer shall  
13 deposit the entire amount in the state treasury to the credit of the workers  
14 compensation fund.

15 (c) (1) Whenever the workers compensation fund may be made liable  
16 for the payment of any amounts in proceedings under the workers  
17 compensation act, the commissioner of insurance, in the capacity of  
18 administrator of such fund, shall be impleaded in such proceedings and  
19 shall represent and defend the workers compensation fund. The  
20 commissioner of insurance shall be deemed impleaded in any such  
21 proceedings whenever written notice of the proceedings setting forth the  
22 nature of the liability asserted against the workers compensation fund, is  
23 given to the commissioner of insurance. The commissioner of insurance  
24 may be made a party in this manner by any party to the proceedings. A  
25 copy of the written notice shall be given to the director and to all other  
26 parties to the proceedings.

27 (2) *If the workers compensation fund has been impleaded in a*  
28 *proceeding as provided by paragraph (1) and the fund has reasonable*  
29 *belief that the liability for the injured worker's benefits should be covered*  
30 *by a principal, as set forth in K.S.A. 44-503, and amendments thereto, the*  
31 *fund shall be permitted to file an application to implead the principal as a*  
32 *party in the proceeding. The fund's application to implead shall be heard*  
33 *within 60 days from the date that the principal is notified of the fund's*  
34 *application to implead.*

35 (3) The administrative law judge shall dismiss the workers  
36 compensation fund from any proceeding where the administrative law  
37 judge has determined that there is insufficient evidence to indicate  
38 involvement by the workers compensation fund.

39 ~~(3)~~(4) In any case in which the workers compensation fund has been  
40 impleaded by the employer or insurance carrier and where an award has  
41 been entered deciding all of the issues in the employee's claim against the  
42 employer, but not deciding the issues between the employer and the fund,  
43 the fund may file an application with the administrative law judge

1 requesting that the fund be dismissed from the case with prejudice. The  
2 employer shall have a period of six months from the filing of the  
3 application in which to complete the employer's evidence on the fund  
4 issues and submit the case to the administrative law judge for decision.  
5 The fund shall then have a period of 60 days after the submission of the  
6 employer's evidence to submit its own evidence concerning the fund issues  
7 in the case. If the employer fails to do so, the administrative law judge  
8 shall dismiss the fund from the case with prejudice on the judge's own  
9 motion.

10 (d) The commissioner of insurance, in the capacity of administrator  
11 of the workers compensation fund, may make settlements of any amounts  
12 which may be payable from the workers compensation fund with regard to  
13 any claim under the workers compensation act, subject to the approval of  
14 the director.

15 (e) The workers compensation fund shall be liable for:

16 (1) Payment of awards to handicapped employees in accordance with  
17 the provisions of K.S.A. 44-569, and amendments thereto, for claims  
18 arising prior to July 1, 1994;

19 (2) payment of workers compensation benefits to an employee who is  
20 unable to receive such benefits from such employee's employer under the  
21 conditions prescribed by K.S.A. 44-532a, and amendments thereto;

22 (3) reimbursement of an employer or insurance carrier pursuant to the  
23 provisions of K.S.A. 44-534a, and amendments thereto, ~~subsection (d) of~~  
24 K.S.A. 44-556(d), and amendments thereto, ~~subsection (e) of~~ K.S.A. 44-  
25 569(c), and amendments thereto, and K.S.A. 44-569a, and amendments  
26 thereto;

27 (4) payment of the actual expenses of the commissioner of insurance  
28 which are incurred for administering the workers compensation fund,  
29 subject to the provisions of appropriations acts; and

30 (5) any other payments or disbursements provided by law.

31 (f) If it is determined that the workers compensation fund is not liable  
32 as described in subsection (e), attorney fees incurred by the workers  
33 compensation fund may be assessed against the party who has impleaded  
34 the workers compensation fund other than impleadings pursuant to K.S.A.  
35 44-532a, and amendments thereto.

36 (g) The commissioner of insurance shall provide for the  
37 implementation of the workers compensation fund as provided in this  
38 section and shall be responsible for ensuring the fund's adequacy to meet  
39 and pay claims awarded against it.

40 (h) The commissioner of insurance shall make an annual report to the  
41 legislative coordinating council, senate committee on commerce and house  
42 committee on commerce and labor during January of each year. The report  
43 shall include recommendations to the legislature on the advisability of



1 continuation or termination of the workers compensation fund or any  
2 provisions of the workers compensation act relating thereto, an analysis of  
3 the federal Americans with disabilities act and its effect on the workers  
4 compensation fund and recommendations on ways to reduce claim and  
5 operational costs of the workers compensation fund.

6 (i) The commissioner of insurance, or the commissioner's designee,  
7 shall provide any consulting actuarial firm contracting with the director of  
8 workers compensation or the legislative coordinating council with such  
9 information or materials pertaining to the workers compensation fund  
10 deemed necessary by the actuarial firm for performing the requirements of  
11 any actuarial reviews of the workers compensation fund for the director of  
12 workers compensation or the legislative coordinating council  
13 notwithstanding any confidentiality prohibition, restriction or limitation  
14 imposed on such information or materials by any other law. The consulting  
15 actuarial firm and all employees and former employees thereof shall be  
16 subject to the same duty of confidentiality imposed by law on other  
17 persons or state agencies with regard to information and materials so  
18 provided and shall be subject to any civil or criminal penalties imposed by  
19 law for violations of such duty of confidentiality. Any reports of the  
20 consulting actuarial firm shall be made in a manner in which will not  
21 reveal directly or indirectly the name of any persons or entities or  
22 individual reserve information involved in claims against the workers  
23 compensation fund. Information provided to the actuary shall not be  
24 subject to discovery, subpoena or other means of legal compulsion in any  
25 civil proceedings and shall be returned by the actuary to the commissioner  
26 of insurance.

27 Sec. 24. K.S.A. 44-501, 44-508, 44-510b, 44-510c, 44-510d, 44-  
28 510e, 44-510f, 44-510h, 44-510k, 44-511, 44-512, 44-515, 44-516, 44-  
29 519, 44-520, 44-523, 44-525, 44-526, 44-531, 44-534a, 44-552 and 44-  
30 566a are hereby repealed.

31 Sec. 25. This act shall take effect and be in force from and after its  
32 publication in the statute book.