

HOUSE BILL No. 2671

AN ACT concerning workers compensation; relating to closure of claims; deductibles; amending K.S.A. 44-559a and K.S.A. 2005 Supp. 44-523 and repealing the existing sections.

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

Section 1. K.S.A. 2005 Supp. 44-523 is hereby amended to read as follows: 44-523. (a) The director, administrative law judge or board shall not be bound by technical rules of procedure, but shall give the parties reasonable opportunity to be heard and to present evidence, insure the employee and the employer an expeditious hearing and act reasonably without partiality.

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

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

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

(3) on application for good cause shown.

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

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

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

(2) If a party or a party's attorney files an affidavit alleging any of the grounds specified in subsection (e)(3), the chief judge shall at once determine, or refer the affidavit to another district court judge for prompt

determination of, the legal sufficiency of the affidavit. If the affidavit is filed in a district court in which there is no other judge who is qualified to hear the matter, the chief judge shall at once notify the departmental justice for the district and request the appointment of another district judge to determine the legal sufficiency of the affidavit. If the affidavit is found to be legally sufficient, the district court judge shall order the director to assign the case to another administrative law judge or to an assistant director.

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

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

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

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

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

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

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

*(f) Any claim that has not proceeded to final hearing, a settlement hearing, or an agreed award under the workers compensation act within five years from the date of filing an application for hearing pursuant to K.S.A. 44-534, and amendments thereto, shall be dismissed by the administrative law judge for lack of prosecution. The administrative law judge may grant an extension for good cause shown, which shall be conclusively presumed in the event that the claimant has not reached maximum medical improvement, provided such motion to extend is filed prior to the five year limitation provided for herein. This section shall not affect any future benefits which have been left open upon proper application by an award or settlement.*

Sec. 2. K.S.A. 44-559a is hereby amended to read as follows: 44-559a. (a) Each insurer issuing a policy to assure the payment of compensation under the workers compensation act may offer, as a part of the policy or as an optional endorsement to the policy, *occurrence or per claimant, or both*, deductibles optional to the policyholder for benefits, which may include allocated loss adjustment expenses, payable under the workers compensation act. *An occurrence deductible means a deductible that applies only once to a single accident, as defined in subsection (d) of K.S.A. 44-508, and amendments thereto, regardless of the number of workers injured in that accident.*

(b) The insurer shall pay all or part of the deductible amount, whichever is applicable to a compensable claim, to the person or medical provider entitled to the benefits conferred by the workers compensation act and seek reimbursement from the insured employer for the applicable deductible amount. The payment or nonpayment of deductible amounts by the insured employer to the insurer shall be treated under the policy insuring the liability for workers compensation in the same manner as payment or nonpayment of premiums. The insurer may require adequate security to provide for reimbursement of the paid deductible from the insured. An employer's failure to reimburse deductible amounts to the insurer shall not cause the deductible amount to be paid from the workers compensation fund under K.S.A. 44-532a and amendments thereto or any other statute. The insurer shall have the right to offset unpaid deductible amounts against unearned premium, if any, in the event of cancellation.

(c) Such deductible shall provide premium credits as approved by the commissioner of insurance, and losses paid by the employer under the deductible shall not apply in calculating the employer's experience modification.

(d) The commissioner of insurance shall not approve any policy form

that permits, directly or indirectly, any part of the deductible to be charged to or be passed on to the worker.

(e) The deductible amounts paid by an employer shall be subject to reimbursement as provided for under K.S.A. 44-567 and amendments thereto when applicable. All compensation benefits paid by the insurer including the deductible amounts shall be subject to assessments under K.S.A. 44-566a and 74-713 and amendments thereto. The Kansas workers compensation plan under K.S.A. 40-2109 and amendments thereto shall not require deductibles under policies issued by the plan.

(f) Group-funded worker compensation pools as defined in K.S.A. 44-581, and amendments thereto, and municipal group-funded pools as defined in K.S.A. 12-2616, and amendments thereto, may offer deductibles as defined herein using deductible rules and premium credits as promulgated by the national council on compensation insurance and approved by the commissioner.

Sec. 3. K.S.A. 44-559a and K.S.A. 2005 Supp. 44-523 are hereby repealed.

Sec. 4. This act shall take effect and be in force from and after its publication in the statute book.

I hereby certify that the above BILL originated in the HOUSE, and passed that body

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HOUSE concurred in  
SENATE amendments \_\_\_\_\_

\_\_\_\_\_  
*Speaker of the House.*

\_\_\_\_\_  
*Chief Clerk of the House.*

Passed the SENATE  
as amended \_\_\_\_\_

\_\_\_\_\_  
*President of the Senate.*

\_\_\_\_\_  
*Secretary of the Senate.*

APPROVED \_\_\_\_\_

\_\_\_\_\_  
*Governor.*