

SENATE BILL No. 430

By Committee on Commerce

1-31

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
36 transfer or payment card; increasing employer liability for expenses of

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

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

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

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

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

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

1 federal compensation paid for any wound, injury, disease, illness or death
2 covered under the workers compensation act.

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

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

6 (A) The employee's deliberate intention to cause such injury;

7 (B) the employee's willful failure to use a guard or protection against
8 accident or injury which is required pursuant to any statute and provided
9 for the employee;

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

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

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

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

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

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

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

41 Confirmatory
42 test cutoff
43 levels (ng/ml)

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

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

12 ² Benzoyllecgonine.

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

15 ⁴ 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 program and such required program was properly implemented at the time

1 of testing.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 grandchildren, then brothers and sisters. In the meaning of this section,
2 parents include stepparents, children include stepchildren, grandchildren
3 include stepgrandchildren, brothers and sisters include stepbrothers and
4 stepsisters, and children and parents include that relation by legal
5 adoption. In the meaning of this section, a surviving spouse shall not be
6 regarded as a dependent of a deceased employee or as a member of the
7 family, if the surviving spouse shall have for more than six months
8 willfully or voluntarily deserted or abandoned the employee prior to the
9 date of the employee's death.

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

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

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

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

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

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

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

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

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

42 (2) the date the employee, while employed for the employer against
43 whom benefits are sought, is placed on modified or restricted duty by a

1 physician due to the diagnosed repetitive trauma;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

42 (B) The words "arising out of and in the course of employment" as
43 used in the workers compensation act shall not be construed to include

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

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

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

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

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

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

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

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

1 K.S.A. 74-7036, and amendments thereto, to practice one or more of such
2 technical professions in Kansas.

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

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

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

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

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

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

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

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

43 (u) "Functional impairment" means the extent, expressed as a

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

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

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

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

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

18 (2) *electronic mail with proof that the electronic mail was delivered:*
 19 *or*

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

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

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

32 (a) If an employee leaves any dependents wholly dependent upon the
 33 employee's earnings at the time of the accident or injury, all compensation
 34 benefits under this section shall be paid to the dependent persons. *Upon a*
 35 *judicial determination of dependency*, there shall be an initial payment of
 36 \$60,000 to the surviving legal spouse or a wholly dependent child or
 37 children or both. The initial payment shall not be subject to the 8%
 38 discount as provided in K.S.A. 44-531, and amendments thereto. The
 39 initial payment shall be immediately due and payable and apportioned
 40 50% to the surviving legal spouse and 50% to the dependent children.
 41 Thereafter, the dependents shall be paid weekly compensation, except as
 42 otherwise provided in this section, in a total sum to all the dependents,
 43 equal to $66\frac{2}{3}\%$ of the average weekly wage of the employee at the time of

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

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

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

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

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

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

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

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

41 (c) If an employee does not leave any dependents who were wholly
42 dependent upon the employee's earnings at the time of the injury but
43 leaves dependents, other than a spouse or children, in part dependent on

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

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

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

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

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

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

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

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

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

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

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

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

1 payer of benefits.

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

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

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

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

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

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

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

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

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

1 week.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

43 (13) For the loss of an arm, excluding the shoulder joint, shoulder

1 girdle, shoulder musculature or any other shoulder structures, 210 weeks,
2 and for the loss of an arm, including the shoulder joint, shoulder girdle,
3 shoulder musculature or any other shoulder structures, 225 weeks.

4 (14) For the loss of a foot, 125 weeks.

5 (15) For the loss of a lower leg, 190 weeks.

6 (16) For the loss of a leg, 200 weeks.

7 (17) For the loss of an eye, or the complete loss of the sight thereof,
8 120 weeks.

9 (18) Amputation or severance below the wrist shall be considered as
10 the loss of a hand. Amputation at the wrist and below the elbow shall be
11 considered as the loss of the forearm. Amputation at or above the elbow
12 shall be considered loss of the arm. Amputation below the ankle shall be
13 considered loss of the foot. Amputation at the ankle and below the knee
14 shall be considered as loss of the lower leg. Amputation at or above the
15 knee shall be considered as loss of the leg.

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

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

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

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

1 workers compensation act.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

42 (i) To establish post-injury wage loss, the employee must have the
43 legal capacity to enter into a valid contract of employment. Wage loss

1 caused by voluntary resignation or termination for cause shall in no way
2 be construed to be caused by the injury.

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

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

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

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

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

41 (b) If an employee has sustained an injury for which compensation is
42 being paid, and the employee's death is caused by other and independent
43 causes, any payment of compensation already due the employee at the

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

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

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

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

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

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

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

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

43 (4) for permanent partial disability, where functional impairment only

1 is awarded, ~~-\$75,000~~ \$100,000 for an injury. The ~~-\$75,000~~ \$100,000 cap
2 contained in this subsection shall apply whether or not temporary total
3 disability or temporary partial disability benefits were paid.

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

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

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

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

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

41 (b) (1) If the director finds, upon application of an injured employee,
42 that the services of the healthcare provider furnished as provided in
43 subsection (a) and rendered on behalf of the injured employee are not

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

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

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

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

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

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

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

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

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

1 such employee is exposed under circumstances arising out of and in the
2 course of employment.

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

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

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

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

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

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

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

41 (A) make an award for further medical care if the administrative law
42 judge finds that it is more probably true than not that the injury which was
43 the subject of the underlying award is the prevailing factor in the need for

1 further medical care and that the care requested is necessary to cure or
2 relieve the effects of such injury, or

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

8 ~~(3)(4)~~ If the claimant has not received medical treatment, as defined
9 in ~~subsection (e) of K.S.A. 44-510h(e)~~, and amendments thereto, from an
10 authorized ~~health care~~ *healthcare* provider within two years from the date
11 of the award or two years from the date the claimant last received medical
12 treatment from an authorized ~~health care~~ *healthcare* provider, the employer
13 shall be permitted to make application under this section for permanent
14 termination of future medical benefits. In such case, there shall be a
15 presumption that no further medical care is needed as a result of the
16 underlying injury. The presumption may be overcome by competent
17 medical evidence.

18 ~~(4)(5)~~ No post-award benefits shall be ordered, modified or
19 terminated without giving all parties to the award the opportunity to
20 present evidence, including taking testimony on any disputed matters. A
21 finding with regard to a disputed issue shall be subject to a full review by
22 the board under ~~subsection (b) of K.S.A. 44-551(b)~~, and amendments
23 thereto. Any action of the board pursuant to post-award orders shall be
24 subject to review under K.S.A. 44-556, and amendments thereto.

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

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

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

1 board, only superseded by reviews for preliminary hearings. A decision
2 shall be rendered by the board within 30 days from the time the review
3 ~~hereunder~~ is submitted.

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

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

12 (a) As used in this section:

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

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

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

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

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

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

1 be.

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

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

15 ~~(3)~~(4) The average weekly wage of an employee who performs the
16 same or a very similar type of work on a part-time basis for each of two or
17 more employers, shall be the sum of the average weekly wages of such
18 employee paid by each of the employers.

19 ~~(4)~~(5) In determining an employee's average weekly wage with
20 respect to the employer against whom claim for compensation is made, no
21 money or additional compensation paid to or received by the employee
22 from such employer, or from any source other than from such employer,
23 shall be included as wages, except as provided in this section. No wages,
24 other compensation or benefits of any type, except as provided in this
25 section, shall be considered or included in determining the employee's
26 average weekly wage.

27 ~~(5)~~(6) (A) The average weekly wage of a person serving on a
28 volunteer basis as a duly authorized law enforcement officer, emergency
29 medical service provider as provided in K.S.A. 44-508, and amendments
30 thereto, firefighter or member of a regional emergency medical response
31 team as provided in K.S.A. 48-928, and amendments thereto, who receives
32 no wages for such services, or who receives wages that are substantially
33 less than the usual wages paid for such services by comparable employers
34 to employees who are not volunteers, shall be computed on the basis of the
35 dollar amount closest to, but not exceeding, 112½% of the state average
36 weekly wage.

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

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

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

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

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

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

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

42 (a) Workers compensation payments shall be made at the same time, place
43 and in the same manner as the wages of the worker were payable at the

1 time of the accident, but upon the application of either party the
2 administrative law judge may modify such requirements in a particular
3 case as the administrative law judge deems just, except that:

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

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

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

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

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

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

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

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

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

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

42 (e) Any ~~health-care~~ *healthcare* provider's opinion, whether the
43 provider is a treating ~~health-care~~ *healthcare* provider or is an examining

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

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

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

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

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

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

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

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

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

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

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

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

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

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

42 (3) *the notice required in paragraph (1) shall also include copies of*
43 *all records and reports received from any other source including all*

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

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

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

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

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

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

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

38 Sec. 16. K.S.A. 44-520 is hereby amended to read as follows: 44-520.

39 (a) (1) Proceedings for compensation under the workers compensation act
40 shall not be maintainable unless notice of injury by accident or repetitive
41 trauma is given to the employer, *either orally or in writing as provided by*
42 *paragraph (2) or (3)*, by the earliest of the following dates:

43 (A) 2030 calendar days from the date of accident or the date of injury

1 by repetitive trauma; *or*

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

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

10 Notice may be given orally or in writing.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

16 (3) on application for good cause shown.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

38 (c) The parties, by agreement and with approval of an administrative
39 law judge, may enter into a compromise lump-sum settlement in either
40 permanent total or permanent partial disability cases which prorates the
41 lump-sum settlement over the life expectancy of the injured worker. When
42 such an agreement has been approved, neither the weekly compensation
43 rate paid throughout the case nor the maximum statutory weekly rate

1 applicable to the injury shall apply. No compensation rate shall exceed the
2 maximum statutory weekly rate as of the date of the injury. Instead, the
3 prorated rate set forth in the approved settlement documents shall control
4 and become the rate for that case. This section shall be retroactive in
5 effect.

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

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

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

1 *judge to grant a party's request for additional time to present evidence.*

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

36 (b) If compensation in the form of medical benefits or temporary total
37 disability benefits has been paid by the employer or the employer's
38 insurance carrier either voluntarily or pursuant to an award entered under
39 this section and, upon a full hearing on the claim, the amount of
40 compensation to which the employee is entitled is found to be less than the
41 amount of compensation paid or is totally disallowed, the employer and
42 the employer's insurance carrier shall be reimbursed from the workers
43 compensation fund established in K.S.A. 44-566a, and amendments

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

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

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

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

33 (b) All testimony introduced and proceedings had in hearings shall be
34 taken down by the certified shorthand reporter, ~~and~~ *or recorded digitally*
35 *or by other comparable means.* If an action for review is commenced or if
36 the director, or either party or the best interests of the administration of
37 justice, so instructs, the certified shorthand reporter shall transcribe the
38 certified shorthand reporter's notes of such hearing. *If such hearing was*
39 *recorded by digital recording or other comparable means, a certified*
40 *shorthand reporter or notary public shall transcribe the recording and*
41 *attest to its accuracy.* If an action for review is commenced, the cost of
42 preparing a transcript shall be paid as provided by K.S.A. 77-620, and
43 amendments thereto. If no action for review is commenced, the cost of

1 preparing a transcript shall be taxed as costs in the case at the discretion of
2 the director in accordance with fair and customary rates charged in the
3 state of Kansas. All official notes of such certified shorthand reporters *or*
4 *digital recordings or recordings by other comparable means* shall be
5 preserved and filed in the office of the director. Any transcript prepared as
6 above provided and duly certified shall be received as evidence by the
7 board and by any court with the same effect as if the certified shorthand
8 reporter *or notary* were present and testified to the records so certified.

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

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

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

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

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

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

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

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

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

38 ~~(3)~~(4) In any case in which the workers compensation fund has been
39 impleaded by the employer or insurance carrier and where an award has
40 been entered deciding all of the issues in the employee's claim against the
41 employer, but not deciding the issues between the employer and the fund,
42 the fund may file an application with the administrative law judge
43 requesting that the fund be dismissed from the case with prejudice. The

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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