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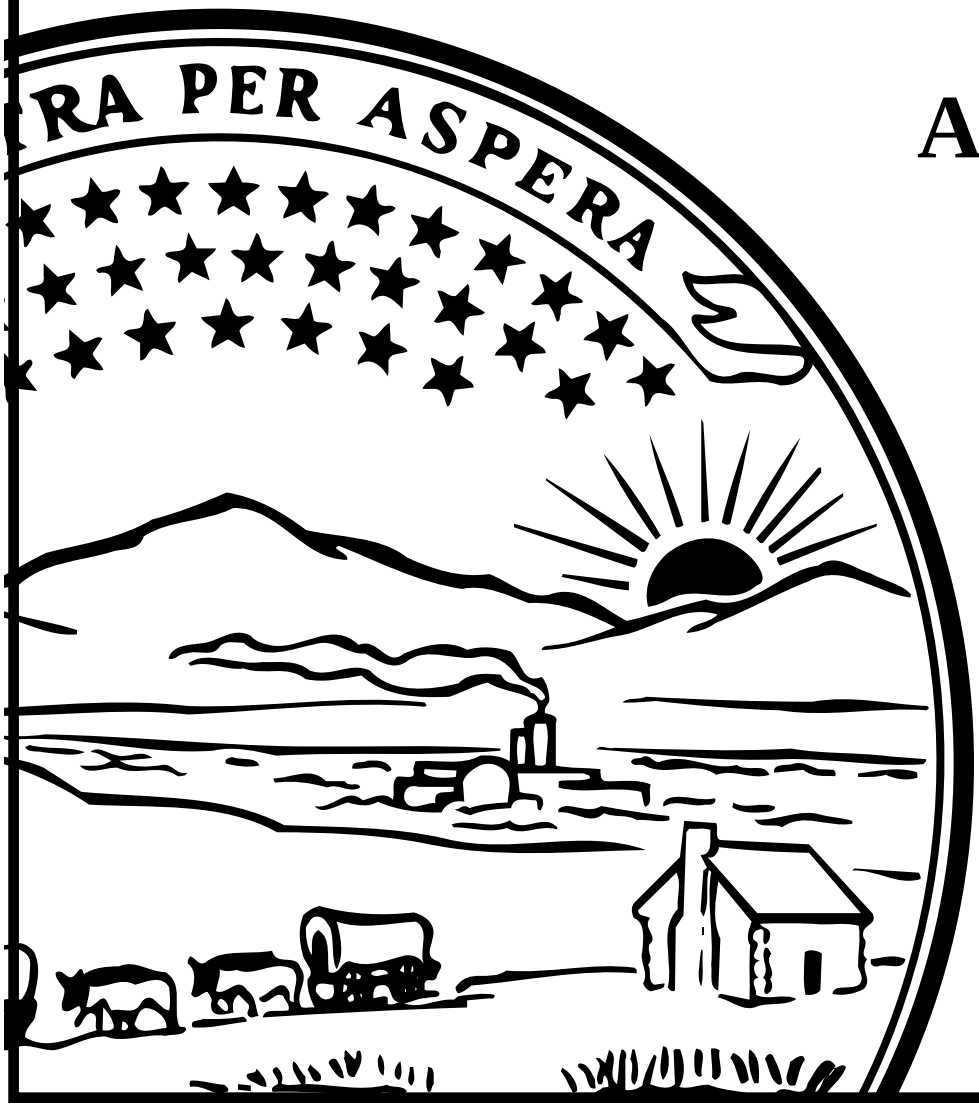
Kansas

Department of Labor

Workers Compensation
Laws and Regulations



April 25, 2013

K-WC 11 (1-14)

GENERAL INFORMATION

This book contains a compilation of those sections and provisions of the *Kansas Statutes Annotated* and *Kansas Administrative Regulations* which pertain to workers compensation. The Kansas Department of Labor, Division of Workers Compensation, publishes this information for the convenience of its customers. For the official text of Kansas statutes and regulations, please consult the *Kansas Statutes Annotated* and *Kansas Administrative Regulations* publications.

These statutes are being used here with the permission of the Revisor of Statutes of the State of Kansas.

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Fraud and Abuse	(785) 296-4000, opt. 4	wcfraud@dol.ks.gov
Injured Worker (Ombudsman Unit)	(785) 296-4000, opt. 1	wc@dol.ks.gov
Mediation	(785) 296-4000, opt. 8	wc@dol.ks.gov
Medical Services and Fee Schedule	(785) 296-4000, opt. 8	wc@dol.ks.gov
Proof of Coverage and Compliance	(785) 296-4000, opt. 5	wccompliance@dol.ks.gov
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WORKERS COMPENSATION SCHEDULE OF BENEFITS

Fiscal Year	Maximum Weekly Compensation	Maximum Total Compensation Benefits				Unauthorized Medical Expenses
		Permanent Total Disability	Temporary or Partial Disability	Death	Funeral	
7-1-08 to 6-30-09	$529	$125,000	$100,000	$250,000	$5,000	$500
7-1-09 to 6-30-10	$546	$125,000	$100,000	$250,000	$5,000	$500
7-1-10 to 5-14-11	$545	$125,000	$100,000	$250,000	$5,000	$500
5-15-11 to 6-30-11	$545	$155,000	$130,000	$300,000	$5,000	$500
7-1-11 to 6-30-12	$555	$155,000	$130,000	$300,000	$5,000	$500
7-1-12 to 6-30-13	$570	$155,000	$130,000	$300,000	$5,000	$500
7-1-13 to 6-30-14	$587	$155,000	$130,000	$300,000	$5,000	$500

MEDICAL MILEAGE

Effective 7-1-08 ..... $0.505	Effective 7-1-11 ..... $0.51
Effective 7-1-09 ..... $0.55	Effective 7-1-12 ..... $0.55
Effective 1-1-10 ..... $0.50	Effective 7-1-13 ..... $0.56

For benefit levels prior to the dates given in the above tables, consult our website at **http://www.dol.ks.gov/WorkComp/current.aspx**

SCHEDULED INJURIES

Schedule	Weeks
Shoulder	225
Arm	210
Forearm	200
Hand	150
Leg	200
Lower leg	190
Foot	125
Eye	120
Hearing, both ears	110
Hearing, one ear	30
Thumb	60
1st (index) finger	37
2nd (middle) finger	30
3rd (ring) finger	20
4th (little) finger	15
Great toe	30
Great toe, end joint	15
Each other toe	10
Each other toe, end joint only	5

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44-501. Compensation; disallowances; substance abuse testing; exceptions, pre-existing conditions; benefits reduced for certain retirement benefits.

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

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

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

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

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

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

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

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

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

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

	Confirmatory test cutoff levels (ng/ml)
Marijuana metabolite [1]	15
Cocaine metabolite [2]	150
Opiates:	
Morphine	2000
Codeine	2000
6-Acetylmorphine [4]	10 ng/ml
Phencyclidine	25
Amphetamines:	
Amphetamine	500
Methamphetamine [3]	500

[1] Delta-9-tetrahydrocannabinol-9-carboxylic acid.

[2] Benzoylecgonine.

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

[4] Test for 6-AM when morphine concentration exceeds 2,000 ng/ml.

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

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

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

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

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

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

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

(E) as a result of federal or state law or a federal or state rule or regulation having the force and effect of law requiring a post-injury testing program and such required program was properly implemented at the time of testing.

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

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

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

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

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

(E) the foundation evidence must establish, beyond a

reasonable doubt, that the test results were from the sample taken from the employee; and

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

(c) Compensation shall not be paid in case of coronary or coronary artery disease or cerebrovascular injury unless it is shown that the exertion of the work necessary to precipitate the disability was more than the employee's usual work in the course of the employee's regular employment.

(d) Except as provided in the workers compensation act, no construction design professional who is retained to perform professional services on a construction project or any employee of a construction design professional who is assisting or representing the construction design professional in the performance of professional services on the site of the construction project, shall be liable for any injury resulting from the employer's failure to comply with safety standards on the construction project for which compensation is recoverable under the workers compensation act, unless responsibility for safety practices is specifically assumed by contract. The immunity provided by this subsection to any construction design professional shall not apply to the negligent preparation of design plans or specifications.

(e) An award of compensation for permanent partial impairment, work disability, or permanent total disability shall be reduced by the amount of functional impairment determined to be preexisting. Any such reduction shall not apply to temporary total disability, nor shall it apply to compensation for medical treatment.

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

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

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

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

(f) If the employee receives, whether periodically or by lump sum, retirement benefits under the federal social security act or retirement benefits from any other retirement system, program, policy or plan which is provided by the employer against which the claim is being made, any compensation benefit payments which the employee is eligible to receive under the workers compensation act for such claim shall be reduced by the weekly equivalent amount of the total amount of all such retirement benefits, less any portion of any such retirement benefit, other than retirement benefits under the federal social security act, that is attributable to payments or contributions made by the employee, but in no event shall the workers compensation benefit be less than the workers compensation benefit payable for the employee's percentage of functional impairment. Where the employee elects to take retirement benefits in a lump sum, the lump sum payment shall be amortized at the rate of 4% per year over the employee's life expectancy to determine the weekly equivalent value of the benefits.

44-501b. Legislative intent; employer obligation, burden of proof; liability.

(a) It is the intent of the legislature that the workers compensation act shall be liberally construed only for the purpose of bringing employers and employees within the provisions of the act. The provisions of the workers compensation act shall be applied impartially to both employers and employees in cases arising thereunder.

(b) If in any employment to which the workers compensation act applies, an employee suffers personal injury by accident, repetitive trauma or occupational disease arising out of and in the course of employment, the employer shall be liable to pay compensation to the employee in accordance with and subject to the provisions of the workers compensation act.

(c) The burden of proof shall be on the claimant to establish the claimant's right to an award of compensation and to prove the various conditions on which the claimant's right depends. In determining whether the claimant has satisfied this burden of proof, the trier of fact shall consider the whole record.

(d) Except as provided in the workers compensation act, no employer, or other employee of such employer, shall be liable for any injury, whether by accident, repetitive trauma, or occupational disease, for which compensation is recoverable under the workers compensation act nor shall an employer be liable to any third party for any injury or death of an employee which was caused under circumstances creating a legal liability against a third party and for which workers compensation is payable by such employer.

44-502. Reservation of penalties.

Nothing in this act shall affect the liability of the employer or employee to a fine or penalty under any other statute.

44-503. Subcontracting.

(a) Where any person (in this section referred to as principal) undertakes to execute any work which is a part of the principal's trade or business or which the principal has contracted to perform and contracts with any other person (in this section referred to as the contractor) for the execution by or under the contractor of the whole or any part of the

work undertaken by the principal, the principal shall be liable to pay to any worker employed in the execution of the work any compensation under the workers compensation act which the principal would have been liable to pay if that worker had been immediately employed by the principal; and where compensation is claimed from or proceedings are taken against the principal, then in the application of the workers compensation act, references to the principal shall be substituted for references to the employer, except that the amount of compensation shall be calculated with reference to the earnings of the worker under the employer by whom the worker is immediately employed. For the purposes of this subsection, a worker shall not include an individual who is a self-employed subcontractor.

(b) Where the principal is liable to pay compensation under this section, the principal shall be entitled to indemnity from any person who would have been liable to pay compensation to the worker independently of this section, and shall have a cause of action under the workers compensation act for indemnification.

(c) Nothing in this section shall be construed as preventing a worker from recovering compensation under the workers compensation act from the contractor instead of the principal.

(d) This section shall not apply to any case where the accident occurred elsewhere than on, in or about the premises on which the principal has undertaken to execute work or which are otherwise under the principal's control or management, or on, in or about the execution of such work under the principal's control or management.

(e) A principal contractor, when sued by a worker of a subcontractor, shall have the right to implead the subcontractor.

(f) The principal contractor who pays compensation to a worker of a subcontractor shall have the right to recover over against the subcontractor in the action under the workers compensation act if the subcontractor has been impleaded.

(g) Notwithstanding any other provision of this section, in any case where the contractor (1) is an employer who employs employees in an employment to which the act is applicable, or has filed a written statement of election with the director to accept the provisions of the workers compensation act pursuant to subsection (b) of K.S.A. 44-505, and amendments thereto, to the extent of such election, and (2) has secured the payment of compensation as required by K.S.A. 44-532, and amendments thereto, for all persons for whom the contractor is required to or elects to secure such compensation, as evidenced by a current certificate of workers compensation insurance, by a certification from the director that the contractor is currently qualified as a self-insurer under that statute, or by a certification from the commissioner of insurance that the contractor is maintaining a membership in a qualified group-funded workers compensation pool, then, the principal shall not be liable for any compensation under this or any other section of the workers compensation act for any person for which the contractor has secured the payment of compensation which the principal would otherwise be liable for under this section and such person shall have no right to file a claim against or otherwise proceed against the principal for compensation under this or any other section of the workers compensation act. In the event that the payment of compensation is not secured or is otherwise unavailable or in effect, then the principal shall be liable for the payment of compensation. No insurance company shall charge a principal a premium for workers compensation insurance for any liability for which the contractor has secured the payment of compensation.

44-503a. Multiple employment; apportionment of liability.

Whenever an employee is engaged in multiple employment, in which such employee performs the same or a very similar type of work on a part-time basis for each of two or more employers, and such employee sustains an injury which arose out of and in the course of the multiple employment with all such employers, and which did not clearly arise out of and in the course of employment with any particular employer, all such employers shall be liable to pay a proportionate amount of the compensation payable under the workmen's compensation act as follows: Each such employer shall be liable for such proportion of the total amount of compensation which is required to be paid by all such employers, as the average weekly wages paid to the employee by such employer, bears to the total average weekly wages paid to the employee by all such employers, determined as provided in subsection (b)(3) of K.S.A. 44-511, and amendments thereto.

44-503c. Employment status of an owner-operator of a motor vehicle; definitions.

(a)(1) Any individual who is an owner-operator and the exclusive driver of a motor vehicle that is leased or contracted to a licensed motor carrier shall not be considered to be a contractor or an employee of the licensed motor carrier within the meaning of K.S.A. 44-503, and amendments thereto, or an employee of the licensed motor carrier within the meaning of subsection (b) of K.S.A. 44-508, and amendments thereto, and the licensed motor carrier shall not be considered to be a principal within the meaning of K.S.A. 44-503, and amendments thereto, or an employer of the owner-operator within the meaning of subsection (a) of K.S.A. 44-508, and amendments thereto, if the owner-operator is covered by an occupational accident insurance policy and is not treated under the terms of the lease agreement or contract with the licensed motor carrier as an employee for purposes of the federal insurance contribution act, 26 U.S.C. § 3101 et seq., the federal social security act, 42 U.S.C. § 301 et seq., the federal unemployment tax act, 26 U.S.C. § 3301 et seq., and the federal statutes prescribing income tax withholding at the source, 26 U.S.C. § 3401 et seq.

(2) As used in this subsection:

(A) "Motor vehicle" means any automobile, truck-trailer, semitrailer, tractor, motor bus or any other self-propelled or motor-driven vehicle used upon any of the public highways of Kansas for the purpose of transporting persons or property;

(B) "licensed motor carrier" means any person, firm, corporation or other business entity that holds a certificate of convenience and necessity, a certificate of public service, an

interstate license as a common or exempt carrier from the state corporation commission or is required to register motor carrier equipment pursuant to 49 U.S.C. § 11506; and

(C) "owner-operator" means an individual who is the owner of a single motor vehicle that is driven exclusively by the owner under a lease agreement or contract with a licensed motor carrier.

(b) Notwithstanding any other provision of this act, a licensed motor carrier may by lease agreement or contract secure workers compensation insurance for an owner-operator, otherwise subject to the act by statute or election, and may charge-back to the owner-operator the premium for such workers compensation insurance, and by doing so does not create an employer-employee relationship between the licensed motor carrier and the owner-operator, or subject the licensed motor carrier to liability under subsection (d)(1) of K.S.A. 44-5,120 and amendments thereto.

(c) For purposes of subsection (b) of this section only, "owner-operator" means a person, firm, corporation or other business entity that is the owner of one or more motor vehicles that are driven exclusively by the owner or the owner's employees or agents under a lease agreement or contract with a licensed motor carrier; provided that neither the owner-operator nor the owner's employees are treated under the term of the lease agreement or contract with the licensed motor carrier as an employee for purposes of the federal insurance contribution act, 26 U.S.C. § 3101 et seq., the federal social security act, 42 U.S.C. § 301 et seq., the federal unemployment tax act, 26 U.S.C. § 3301 et seq., and the federal statutes prescribing income tax withholding at the source, 26 U.S.C. § 3401 et seq.

44-504. Remedy against negligent third party; employer and workers compensation fund subrogated, exclusion; credits against future payments; limitation of actions; attorney fees.

(a) When the injury or death for which compensation is payable under the workers compensation act was caused under circumstances creating a legal liability against some person other than the employer or any person in the same employ to pay damages, the injured worker or the worker's dependents or personal representatives shall have the right to take compensation under the workers compensation act and pursue a remedy by proper action in a court of competent jurisdiction against such other person.

(b) In the event of recovery from such other person by the injured worker or the dependents or personal representatives of a deceased worker by judgment, settlement or otherwise, the employer shall be subrogated to the extent of the compensation and medical aid provided by the employer to the date of such recovery and shall have a lien therefor against the entire amount of such recovery, excluding any recovery, or portion thereof, determined by a court to be loss of consortium or loss of services to a spouse. The employer shall receive notice of the action, have a right to intervene and may participate in the action. The district court shall determine the extent of participation of the intervenor, including the apportionment of costs and fees. Whenever any judgment in any such action, settlement or recovery otherwise is recovered by the injured worker or the worker's dependents or personal representative prior to the completion of compensation or medical aid payments, the amount of such judgment, settlement or recovery otherwise actually paid and recovered which is in excess of the amount of compensation and medical aid paid to the date of recovery of such judgment, settlement or recovery otherwise shall be credited against future payments of the compensation or medical aid. Such action against the other party, if prosecuted by the worker, must be instituted within one year from the date of the injury and, if prosecuted by the dependents or personal representatives of a deceased worker, must be instituted within 18 months from the date of such injury.

(c) Failure on the part of the injured worker, or the dependents or personal representatives of a deceased worker to bring such action within the time specified by this section, shall operate as an assignment to the employer of any cause of action in tort which the worker or the dependents or personal representatives of a deceased worker may have against any other party for such injury or death, and such employer may enforce the cause of action in the employer's name or in the name of the worker, dependents or personal representatives for their benefit as their interest may appear by proper action in any court of competent jurisdiction. The court shall fix the attorney fees which shall be paid proportionately by the employer and employee in the amounts determined by the court.

(d) If the negligence of the worker's employer or those for whom the employer is responsible, other than the injured worker, is found to have contributed to the party's injury, the employer's subrogation interest or credits against future payments of compensation and medical aid, as provided by this section, shall be diminished by the percentage of the recovery attributed to the negligence of the employer or those for whom the employer is responsible, other than the injured worker.

(e) In any case under the workers compensation act in which the workers compensation fund has paid or is paying compensation, the workers compensation fund is hereby subrogated to the rights of the employer under this section and shall have all the rights of subrogation or to credits against future compensation payments which are granted to the employer by this section. The commissioner of insurance may exercise all such rights for the fund to the same extent that such rights may be exercised by the employer under this section, including the right to intervene, to enforce a lien or to bring any cause of action, all as provided in this section.

(f) As used in this section, "compensation and medical aid" includes all payments of medical compensation, disability compensation, death compensation, including payments under K.S.A. 44-570 and amendments thereto, and any other payments made or provided pursuant to the workers compensation act.

(g) In any case under the workers compensation act in which the workers compensation fund or an insurer or a qualified group-funded workers compensation pool, as provided in K.S.A. 44-532 and amendments thereto, is subrogated to the rights of the employer under the workers compensation act, the court shall fix the attorney fees which shall be paid

proportionately by the workers compensation fund, insurer or qualified group-funded workers compensation pool and the worker or such worker's dependents or personal representatives in the amounts determined by the court based upon the amounts to be received from any recovery pursuant to an action brought under this section.

44-505. Application of act.

(a) Subject to the provisions of K.S.A. 44-506 and amendments thereto, the workers compensation act shall apply to all employments wherein employers employ employees within this state except that such act shall not apply to:

(1) Agricultural pursuits and employments incident thereto, other than those employments in which the employer is the state, or any department, agency or authority of the state;

(2) any employment, other than those employments in which the employer is the state, or any department, agency or authority of the state, wherein the employer had a total gross annual payroll for the preceding calendar year of not more than $20,000 for all employees and wherein the employer reasonably estimates that such employer will not have a total gross annual payroll for the current calendar year of more than $20,000 for all employees, except that no wages paid to an employee who is a member of the employer's family by marriage or consanguinity shall be included as part of the total gross annual payroll of such employer for purposes of this subsection;

(3) any employment, other than those employments in which the employer is the state, or any department, agency or authority of the state, wherein the employer has not had a payroll for a calendar year and wherein the employer reasonably estimates that such employer will not have a total gross annual payroll for the current calendar year of more than $20,000 for all employees, except that no wages paid to an employee who is a member of the employer's family by marriage or consanguinity shall be included as a part of the total gross annual payroll of such employer for purposes of this subsection;

(4) the employment of any firefighters who are members of a firemen's relief association for whom a valid statement of election to except such members from the provisions of the workers compensation act has been filed with the director by the governing body of such firemen's relief association as provided in K.S.A. 44-505d and amendments thereto; or

(5) services performed by a qualified real estate agent as an independent contractor. For the purposes of this act a qualified real estate agent shall be deemed to be an independent contractor if such qualified real estate agent is licensed by the Kansas real estate commission as a salesperson under the real estate brokers' and salespersons' license act and for whom: (A) Substantially all of the remuneration, whether or not paid in cash, for the services performed by such individual as a real estate salesperson is directly related to sales or other output, including the performance of services, rather than to the number of hours worked; and (B) the services performed by the individual are performed pursuant to a written contract between such individual and the person for whom the services are performed and such contract provides that the individual will not be treated as an employee with respect to such services for state tax purposes.

(b) Each employer who employs employees in employments which are excepted from the provisions of the workers compensation act as provided in subsection (a) of this section, shall be entitled to come within the provisions of such act by: (1) Becoming a member in and by maintaining a membership in a qualified group-funded workers' compensation pool, as provided by K.S.A. 44-581 to 44-591, inclusive, and amendments thereto; or (2) filing with the director a written statement of election to accept thereunder. Such written statement of election shall be effective from the date of filing until such time as the employer files a written statement withdrawing such election with the director. All written statements of election or of withdrawal of election filed pursuant to this subsection shall be in such form as may be required by the director by rules and regulations.

(c) This act shall not apply in any case where the accident occurred prior to the effective date of this act. All rights which accrued by reason of any such accident shall be governed by the laws in effect at that time.

44-505b. County as self-insurer; establishment of reserve fund; retransfers.

The board of county commissioners of any county may act as a self-insurer under the workmen's compensation act. If the board does elect to act as a self-insurer under that act, such board shall by resolution create a separate fund in the budget of such county to be a reserve fund for the payment of workmen's compensation claims, judgments, and expenses. Such board may provide money for such reserve fund at any time by transfer of money from the road and bridge fund of said county in such amount as the board deems necessary, and notwithstanding any law prohibiting the transfer of any part of one fund to another, the county treasurer of such county, upon receipt of a certified copy of the resolution of the board of county commissioners authorizing such transfer of funds, shall transfer the amount so authorized from the road and bridge fund of such county to the workmen's compensation reserve fund. Payments from the reserve fund so created are to be made by check of the county treasurer upon written order from the board of county commissioners. The balance remaining in the reserve fund at the end of the fiscal year shall be carried forward into the reserve fund for succeeding fiscal years. Such fund shall not be subject to the provisions of K.S.A. 79-2925 to 79-2937, inclusive, and acts amendatory thereof and supplemental thereto, except that in making the budget, the amounts credited to and the amount on hand in such reserve fund, and the amount expended therefrom, shall be included in the annual budget of the county for the information of the residents. Interest earned on the investment of moneys in such fund shall be credited to such fund.

If the board of county commissioners shall determine on an actuarial basis that money which has been credited to such fund, or any part thereof, is no longer needed for the purposes for which it was established, the board may transfer such amount not needed to the fund from which the money was received. Any money so transferred shall be budgeted in accordance with the provisions of K.S.A. 79-2925 to 79-2937, inclusive, and acts amendatory thereof or supplemental thereto.

44-505c. Local political and taxing subdivision; payment of workmen's compensation coverage.

Any city, county, school district or other political subdivision or municipality is hereby authorized to pay the cost of workmen's compensation coverage for its employees as provided by this act and may pay such costs from the various funds from which compensation is paid to its employees. School districts may pay such costs from the special reserve fund of the school district. Any such city, county, political subdivision or municipality, except a school district, may levy annually at the time of its levy of taxes an additional tax for such purpose and, in the case of cities, counties and school districts, for the purpose of paying a portion of the principal and interest on bonds issued by a city under the authority of K.S.A. 12-1774, and amendments thereto, which, together with any other fund available shall be sufficient to provide the cost thereof. Any taxing subdivision authorized to levy a tax under this section, in lieu of levying such tax, may pay such costs from any employee benefits contribution fund established pursuant to K.S.A. 12-16,102, and amendments thereto. Counties shall provide for coverage of district court officers and employees whose total salary is payable by counties. Such tax shall not be subject to any tax levy limit prescribed by article 19 of chapter 79 of the Kansas Statutes Annotated, and amendments thereto.

44-505d. Firemen's relief association members; procedure for exemption and for coverage under act after exemption therefrom.

(a) The governing body of each firemen's relief association in any unit of local government of this state shall conduct an election among all of the members of the association prior to August 1, 1975, to determine whether such members shall be excepted from the provisions of the workmen's compensation act. If a majority of the members of any firemen's relief association in any unit of local government of this state vote in such election to except the members of such association from the provisions of the workmen's compensation act, the governing body of such association and the governing body of such unit of local government may enter into an agreement in writing to except such members from the provisions of the workmen's compensation act. Upon the execution of such agreement, the governing body of the firemen's relief association shall file a copy of the agreement and a statement of election to except the members of such association from the provisions of the workmen's compensation act with the director of workers' compensation.

(b) Prior to August 1 in any year thereafter, the governing body of any firemen's relief association which has been excepted from the provisions of the workmen's compensation act under subsection (a), may conduct an election among all of the members of such association to determine whether such members shall be covered by the provisions of the workmen's compensation act in the manner otherwise provided by law. If a majority of the members of such association vote in such election to come within the provisions of the workmen's compensation act, the governing body of the association shall file with the director of workers' compensation a written statement of election to come within the provisions of the workmen's compensation act. Upon the filing of such statement, the members of such association shall be covered by the provisions of the workmen's compensation act.

(c) Subsequent to an election resulting in coverage under the workmen's compensation act under subsection (b) and prior to August 1 of any year thereafter, the governing body of any such firemen's relief association may conduct an election in the manner provided in subsection (a) to except again the members of such association from the provisions of the workmen's compensation act as provided in subsection (a).

44-505e. Schools, area vocational-technical schools and community colleges as self-insurer; establishment of reserve fund; retransfers.

A school district, area vocational-technical school or community junior college may act as a self-insurer under the workmen's compensation act. If a school district, area vocational-technical school or community junior college elects to act as a self-insurer under that act, the school district, area vocational-technical school or community junior college shall establish a separate fund to be known as the "school workers' compensation reserve fund" for the payment of workmen's compensation claims, judgments and expenses. Any school district or community junior college may transfer moneys from its general fund and any area vocational-technical school may transfer moneys from its operating fund to the school workers' compensation reserve fund as authorized by law. The balance remaining in the reserve fund at the end of the fiscal year shall be carried forward into the reserve fund for succeeding years. Such fund shall not be subject to the provisions of K.S.A. 79-2925 to 79-2937, inclusive, and acts amendatory thereof and supplemental thereto, except that in making the budget, the amounts credited to and the amount on hand in such reserve fund, and the amount expended therefrom, shall be included in the annual budget for the information of the residents. Interest earned on the investment of moneys in such fund shall be credited to such fund. Payments from said school workers' compensation reserve fund may be made to agents for the school district who have contracted to service and administer all or a portion of the school district's workers' compensation program.

If the school district, area vocational-technical school or community junior college shall determine on an actuarial basis that money which has been credited to such fund, or any part thereof, is no longer needed for the purposes for which it was established, the school district, area vocational-technical school or community junior college may transfer such amount not needed to the funds or accounts from which the money was received. Any money so transferred shall be budgeted in accordance with the provisions of K.S.A. 79-2925 to 79-2937, inclusive, and acts amendatory thereof or supplemental thereto.

44-505f. City as self-insurer; establishment of reserve fund; retransfers.

(a) The governing body of any city may act as a self-

insurer under the workmen's compensation act. If the governing body elects to act as a self-insurer, it shall by resolution create a separate fund in the budget and accounts of such city which shall be a reserve fund for the payment of workmen's compensation claims, judgments and expenses. Payments to such reserve fund may be made from moneys available to the city under the provisions of K.S.A. 44-505c, and amendments thereto, and by the transfer of moneys from any other funds or accounts of the city in reasonable proportion to the estimated cost of providing workmen's compensation benefits to the employees of the city compensated from such funds. Any balance remaining in such reserve fund at the end of the fiscal year shall be carried forward into the reserve fund for succeeding fiscal years. Such fund shall not be subject to the provisions of K.S.A. 79-2925 to 79-2937, inclusive, and acts amendatory thereof or supplemental thereto, except that in making the budget of such city, the amounts credited to and the amount on hand in such reserve fund, and the amount expended therefrom, shall be included in the annual budget for the information of the residents. Interest earned on the investment of moneys in such fund shall be credited to such fund.

(b) If the governing body of any city shall determine on an actuarial basis that money which has been credited to such fund, or any part thereof, is no longer needed for the purposes for which it was established, said governing body may transfer such amount not needed to the funds or accounts from which the money was received. Any money so transferred shall be budgeted in accordance with the provisions of K.S.A. 79-2925 to 79-2937, inclusive, and acts amendatory thereof or supplemental thereto.

(c) The provisions of this section shall be construed as supplemental to and as part of the workmen's compensation act.

44-506. Application of act to certain businesses or employments, lands and premises.

The workmen's compensation act shall not be construed to apply to business or employment which, according to law, is so engaged in interstate commerce as to be not subject to the legislative power of the state, nor to persons injured while they are so engaged: Provided, That the workmen's compensation act shall apply also to injuries sustained outside the state where: (1) The principal place of employment is within the state; or (2) the contract of employment was made within the state, unless such contract otherwise specifically provides: Provided, however, That the workmen's compensation act shall apply to all lands and premises owned or held by the United States of America by deed or act of cession, by purchase or otherwise, which is within the exterior boundaries of the state of Kansas and to all projects, buildings, constructions, im-provements and property belonging to the United States of America within said exterior boundaries as authorized by 40 U.S.C. 290, enacted June 25, 1936.

44-508. Definitions. As used in the workers compensation act:

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

(b) "Workman" or "employee" or "worker" means any person who has entered into the employment of or works under any contract of service or apprenticeship with an employer. Such terms shall include, but not be limited to: Executive officers of corporations; professional athletes; persons serving on a volunteer basis as duly authorized law enforcement officers, attendants, as defined in subsection (f) of K.S.A. 65-6112, and amendments thereto, drivers of ambulances as defined in subsection (d) of K.S.A. 65-6112, and amendments thereto, firefighters, but only to the extent and during such periods as they are so serving in such capacities; persons employed by educational, religious and charitable organizations, but only to the extent and during the periods that they are paid wages by such organizations; persons in the service of the state, or any department, agency or authority of the state, any city, school district, or other political subdivision or municipality or public corporation and any instrumentality thereof, under any contract of service, express or implied, and every official or officer thereof, whether elected or appointed, while performing official duties; persons in the service of the state as volunteer members of the Kansas department of civil air patrol, but only to the extent and during such periods as they are officially engaged in the performance of functions specified in K.S.A. 48-3302, and amendments thereto; volunteers in any employment, if the employer has filed an election to extend coverage to such volunteers; minors, whether such minors are legally or illegally employed; and persons performing community service work, but only to the extent and during such periods as they are performing community service work and if an election has been filed an [election] to extend coverage to such persons. Any reference to an employee who has been injured shall, where the employee is dead, include a reference to the employee's dependents, to the employee's legal representatives, or, if the employee is a minor or an incapacitated person, to the employee's guardian or conservator. Unless there is a valid election in effect which has been filed as provided in K.S.A. 44-542a, and amendments thereto, such terms shall not include individual employers, limited liability company members, partners or self-employed persons.

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

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

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

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

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

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

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

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

(e) "Repetitive trauma" refers to cases where an injury occurs as a result of repetitive use, cumulative traumas or microtraumas. The repetitive nature of the injury must be demonstrated by diagnostic or clinical tests. The repetitive trauma must be the prevailing factor in causing the injury.

"Repetitive trauma" shall in no case be construed to include occupational disease, as defined in K.S.A. 44-5a01, and amendments thereto.

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

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

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

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

related; or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(B) The words "arising out of and in the course of employment" as used in the workers compensation act shall not be construed to include injuries to the employee occurring while the employee is on the way to assume the duties of employment or after leaving such duties, the proximate cause of which injury is not the employer's negligence. An employee shall not be construed as being on the way to assume the duties of employment or having left such duties at a time when the worker is on the premises owned or under the exclusive control of the employer or on the only available route to or from work which is a route involving a special risk or hazard connected with the nature of the employment that is not a risk or hazard to which the general public is exposed and which is a route not used by the public except in dealings with the employer. An employee shall not be construed as being on the way to assume the duties of employment, if the employee is a provider of emergency services responding to an emergency.

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

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

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

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

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

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

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

amendments thereto, to practice one or more of such technical professions in Kansas.

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

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

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

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

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

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

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

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

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

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

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

44-509. Incapacitated workman or dependent; exercise of rights; limitation of actions.

(a) In case an injured workman is an incapacitated person or a minor, or when death results from an injury in case any of his dependents, as herein defined, is an incapacitated person "or a minor" at the time when any right, privilege, or election accrues to him under the workmen's compensation act, his guardian or conservator may on his behalf, claim and exercise such right, privilege, or election, and no limitation of time, in the workmen's compensation act provided for, shall run, so long as such incapacitated person or minor has no guardian or conservator.

44-510b. Compensation where death results from injury; compensation upon remarriage; apportionment; burial expenses; limitations on compensation; annual statement by surviving spouse.

Where death results from injury, compensation shall be paid as provided in K.S.A. 44-510h and 44-510i, and amendments thereto, and as follows:

(a) If an employee leaves any dependents wholly dependent upon the employee's earnings at the time of the accident or injury, all compensation benefits under this section shall be paid to such dependent persons. There shall be an initial payment of $40,000 to the surviving legal spouse or a wholly dependent child or children or both. The initial payment shall not be subject to the 8% discount as provided in K.S.A. 44-531, and amendments thereto. The initial payment shall be immediately due and payable and apportioned 50% to the surviving legal spouse and 50% to the dependent children. Thereafter, such dependents shall be paid weekly compensation, except as otherwise provided in this section, in a total sum to all such dependents, equal to $66^2/_3$% of the average weekly wage of the employee at the time of the accident or injury, computed as provided in K.S.A. 44-511, and amendments thereto, but in no event shall such weekly benefits exceed the maximum weekly benefits provided in K.S.A. 44-510c, and amendments thereto, nor be less than a minimum weekly benefit of the dollar amount nearest to 50% of the state's average weekly wage as determined pursuant to K.S.A. 44-511, and amendments thereto, subject to the following:

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

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

(3) Any wholly dependent child of the employee shall be paid compensation, except as otherwise provided in this section, until such dependent child becomes 18 years of age. A wholly dependent child of the employee shall be paid compensation, except as otherwise provided in this section, until such dependent child becomes 23 years of age during any period of time that one of the following conditions is met:

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

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

(4) If the employee leaves no legal spouse or dependent children eligible for benefits under this section but leaves other dependents wholly dependent upon the employee's earnings, such other dependents shall receive weekly compensation benefits as provided in this subsection until death, remarriage or so long as such other dependents do not receive more than 50% of their support from any other earnings or income or from any other source, except that the maximum benefits payable to all such other dependents, regardless of the number of such other dependents, shall not exceed a maximum amount of $18,500.

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

(c) If an employee does not leave any dependents who were wholly dependent upon the employee's earnings at the time of the injury but leaves dependents, other than a spouse or children, in part dependent on the employee's earnings, such percentage of a sum equal to three times the employee's average yearly earnings but not exceeding $18,500 but not less than $2,500, as such employee's average annual contributions which the employee made to the support of such dependents during the two years preceding the date of the injury, bears to the employee's average yearly earnings during the contemporaneous two-year period, shall be paid in compensation to such dependents, in weekly payments as provided in subsection (a), not to exceed $18,500 to all such dependents.

(d) If an employee does not leave any dependents, either wholly or partially dependent upon the employee, a lump-sum payment of $25,000 shall be made to the legal heirs of such employee in accordance with Kansas law. However under no circumstances shall such payment escheat to the state. Notwithstanding the provisions of this subsection, no such payment shall be required if the employer has procured a life insurance policy, with beneficiaries designated by the employee, providing coverage in an amount not less than $18,500.

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

(f) In all cases of death compensable under this section, the employer shall pay the reasonable expense of burial not exceeding $5,000. Where required, the employer shall pay the costs of a court-appointed conservator not to exceed $1,000.

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

(h) Notwithstanding any other provision in this section to the contrary, the maximum amount of compensation benefits payable under this section, including the initial payment in subsection (a) to any and all dependents by the employer shall not exceed a total amount of $300,000 and when such total amount has been paid the liability of the employer for any further compensation under this section to dependents, other than minor children of the employee, shall cease except that the payment of compensation under this section to any minor child of the employee shall continue for the period of the child's minority at the weekly rate in effect when the employer's liability is otherwise terminated under this subsection and shall not be subject to termination under this subsection until such child becomes 18 years of age.

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

44-510c. Compensation for permanent total and temporary total disabilities.

Where death does not result from the injury, compensation shall be paid as provided in K.S.A. 44-510h and 44-510i, and

amendments thereto, and as follows:

(a)(1) Where permanent total disability results from the injury, weekly payments shall be made during the period of permanent total disability in a sum equal to $66^2/_3$% of the average weekly wage of the injured employee, computed as provided in K.S.A. 44-511, and amendments thereto, but in no case less than $25 per week nor more than the dollar amount nearest to 75% of the state's average weekly wage, determined as provided in K.S.A. 44-511, and amendments thereto, per week. The payment of compensation for permanent total disability shall continue for the duration of such disability, subject to review and modification as provided in K.S.A. 44-528, and amendments thereto.

(2) Permanent total disability exists when the employee, on account of the injury, has been rendered completely and permanently incapable of engaging in any type of substantial and gainful employment. Expert evidence shall be required to prove permanent total disability.

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

(b)(1) Where temporary total disability results from the injury, no compensation shall be paid during the first week of disability, except that provided in K.S.A. 44-510h and 44-510i, and amendments thereto, unless the temporary total disability exists for three consecutive weeks, in which case compensation shall be paid for the first week of such disability. Thereafter weekly payments shall be made during such temporary total disability, in a sum equal to $66^2/_3$% of the average gross weekly wage of the injured employee, computed as provided in K.S.A. 44-511, and amendments thereto, but in no case less than $25 per week nor more than the dollar amount nearest to 75% of the state's average weekly wage, determined as provided in K.S.A. 44-511, and amendments thereto, per week.

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

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

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

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

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

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

44-510d. Compensation for certain permanent partial disabilities; computation thereof; schedule.

(a) Where disability, partial in character but permanent in quality, results from the injury, the injured employee shall be entitled to the compensation provided in K.S.A. 44-510h and 44-510i, and amendments thereto. The injured employee may be entitled to payment of temporary total disability as defined in K.S.A. 44-510c, and amendments thereto, or temporary partial disability as defined in subsection (a)(1) of K.S.A. 44-510e, and amendments thereto, provided that the injured employee shall not be entitled to any other or further compensation for or during the first week following the injury unless such disability exists for three consecutive weeks, in which event compensation shall be paid for the first week. Thereafter compensation shall be paid for temporary total or temporary partial disability as provided in the following schedule, $66^2/_3$% of the average weekly wages to be computed as provided in K.S.A. 44-511, and amendments thereto, except that in no case shall the weekly compensation be more than the maximum as provided for in K.S.A. 44-510c, and amendments thereto.

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

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

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

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

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

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

(6) Loss of the first phalange of the thumb or of any finger shall be considered to be equal to the loss of ½ of such thumb or finger, and the compensation shall be ½ of the amount specified

above. The loss of the first phalange and any part of the second phalange of any finger, which includes the loss of any part of the bone of such second phalange, shall be considered to be equal to the loss of $^{2}/_{3}$ of such finger and the compensation shall be $^{2}/_{3}$ of the amount specified above. The loss of the first phalange and any part of the second phalange of a thumb which includes the loss of any part of the bone of such second phalange, shall be considered to be equal to the loss of the entire thumb. The loss of the first and second phalanges and any part of the third proximal phalange of any finger, shall be considered as the loss of the entire finger. Amputation through the joint shall be considered a loss to the next higher schedule.

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

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

(9) The loss of the first phalange of any toe shall be considered to be equal to the loss of ½ of such toe and the compensation shall be ½ of the amount above specified.

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

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

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

(13) For the loss of an arm, excluding the shoulder joint, shoulder girdle, shoulder musculature or any other shoulder structures, 210 weeks, and for the loss of an arm, including the shoulder joint, shoulder girdle, shoulder musculature or any other shoulder structures, 225 weeks.

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) Payment rate shall be the lesser of: (A) The amount determined by multiplying the average weekly wage of the worker prior to such injury by $66^{2}/_{3}$%; or (B) the maximum

provided in K.S.A. 44-510c, and amendments thereto;

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

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

44-510e. Compensation for temporary or permanent partial general disabilities; whole body injury; extent of disability; computation thereof; functional impairment defined; termination upon death from other causes; limitations; other remedies excluded.

(a) In case of whole body injury resulting in temporary or permanent partial general disability not covered by the schedule in K.S.A. 44-510d, and amendments thereto, the employee shall receive weekly compensation as determined in this subsection during the period of temporary or permanent partial general disability not exceeding a maximum of 415 weeks.

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

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

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

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

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

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

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

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

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

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

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

(E) “Wage loss” shall mean the difference between the average weekly wage the employee was earning at the time of the injury and the average weekly wage the employee is capable of earning after the injury. The capability of a worker to earn post-injury wages shall be established based upon a consideration of all factors, including, but not limited to, the injured worker’s age, physical capabilities, education and training, prior experience, and availability of jobs in the open labor market. The administrative law judge shall impute an appropriate post-injury average weekly wage based on such factors. Where the employee is engaged in post-injury employment for wages, there shall be a rebuttable presumption that the average weekly wage an injured worker is actually earning constitutes the post-injury average weekly wage that the employee is capable of earning. The presumption may be overcome by competent evidence.

(i) To establish post-injury wage loss, the employee must have the legal capacity to enter into a valid contract of employment. Wage loss caused by voluntary resignation or termination for cause shall in no way be construed to be caused by the injury.

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

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

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

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

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

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

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

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

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

44-510f. Employer's maximum liability for disability compensation; credit for unearned wages.

(a) Notwithstanding any provision of the workers compensation act to the contrary, the maximum compensation benefits payable by an employer shall not exceed the following:

(1) For permanent total disability, including temporary total, temporary partial, permanent partial and temporary partial disability payments paid or due, $155,000 for an injury;

(2) for temporary total disability, including any prior permanent total, permanent partial or temporary partial disability payments paid or due, $130,000 for an injury;

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

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

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

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

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

44-510g. Vocational rehabilitation, agreement of employer or insurance carrier; vocational rehabilitation administrator and assistants; qualified service providers, referrals.

(a) A primary purpose of the workers compensation act shall be to restore the injured employee to work at a comparable wage. To this end, the director shall appoint, subject to the approval of the secretary, a specialist in vocational rehabilitation, who shall be referred to as the vocational rehabilitation administrator. No vocational assessment, evaluation, services or training shall be provided or made available under the workers compensation act unless specifically agreed to by the employer or insurance carrier providing or making available such assessment, evaluation, services or training. Upon such agreement, the vocational rehabilitation administrator may make recommendations for and supervise such assessment, evaluation, services or training on behalf of the employee and such assessment, evaluation, services or training shall not be arbitrarily terminated by the employer or insurance carrier once such agreement is entered into by the employer or insurance carrier. Nothing in this section shall prohibit the employee from obtaining such assessment, evaluation, services or training at the employee's expense from any provider or through any other public or private funding or agency. The director may appoint, subject to the approval of the secretary, assistant vocational rehabilitation administrators. The vocational rehabilitation administrator and the assistant vocational rehabilitation administrators shall be in the classified service under the Kansas civil service act. The vocational rehabilitation administrator and the assistant vocational rehabilitation administrators, subject to the direction of the vocational rehabilitation administrator, shall: (1) Continuously study the problems of vocational rehabilitation; (2) investigate and maintain a directory of all vocational rehabilitation facilities, public or private, in this state, and, where the vocational rehabilitation administrator determines necessary, in any other state; and (3) be fully knowledgeable regarding the eligibility requirements of all state, federal and other public vocational rehabilitation facilities and benefits.

(b) The director shall approve as qualified such individuals, facilities, institutions, agencies and employer programs as the director finds are capable of rendering competent vocational rehabilitation services and which are referred to in this section as "providers." The director shall continuously monitor the quality and timeliness of the services of providers found qualified by the director to provide vocational rehabilitation services. No such provider shall be approved as qualified unless the provider is equipped with such physical facilities as the director deems necessary and is staffed with personnel specifically trained and qualified, as the director deems necessary, to provide vocational rehabilitation services.

If the employer or the employer's insurance carrier do not agree to provide vocational rehabilitation services, the employee may request the vocational rehabilitation administrator to refer the employee to an appropriate provider for vocational rehabilitation services to be provided at the employee's expense. Referrals for vocational rehabilitation services shall not be made to a provider in which the employer, the employer's insurance carrier or the claims adjusting company handling the claim has a demonstrable financial interest, unless a full, written disclosure of the demonstrable financial interest has been submitted in writing by the provider to the employer, the employer's insurance carrier, any claims adjusting company handling the claim, the employee and the vocational rehabilitation administrator. Medical management or medical monitoring services shall not be considered to be providing vocational rehabilitation services and the costs thereof shall not be considered as the payment of workers compensation benefits nor medical benefits.

44-510h. Medical compensation; change of health care provider; examination by alternate health care provider; faith healing; preventative hepatitis treatment; presumption of employer's obligations; termination of.

(a) It shall be the duty of the employer to provide the services of a health care provider, and such medical, surgical and hospital treatment, including nursing, medicines, medical and surgical supplies, ambulance, crutches, apparatus and transportation to and from the home of the injured employee to a place outside the community in which such employee resides, and within such community if the director, in the director's discretion, so orders, including transportation expenses computed in accordance with subsection (a) of K.S.A. 44-515, and amendments thereto, as may be reasonably necessary to cure and relieve the employee from the effects of the injury.

(b)(1) If the director finds, upon application of an injured employee, that the services of the health care provider furnished as provided in subsection (a) and rendered on behalf of the injured employee are not satisfactory, the director may authorize the appointment of some other health care provider. In any such case, the employer shall submit the names of two health care providers who, if possible given the availability of local health care providers, are not associated in practice together. The injured employee may select one from the list who shall be the authorized treating health care provider. If the injured employee is unable to obtain satisfactory services from any of the health care providers submitted by the employer under this paragraph, either party or both parties may request the director to select a treating health care provider.

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

(c) An injured employee whose injury or disability has been established under the workers compensation act may rely, if done in good faith, solely or partially on treatment by prayer

or spiritual means in accordance with the tenets of practice of a church or religious denomination without suffering a loss of benefits subject to the following conditions:

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

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

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

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

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

(d) In any employment to which the workers compensation act applies, the employer shall be liable to each employee who is employed as a duly authorized law enforcement officer, firefighter, driver of an ambulance as defined in subsection (b) [(d)] of K.S.A. 65-6112, and amendments thereto, an ambulance attendant as defined in subsection (d) of K.S.A. 65-6112, and amendments thereto, or a member of a regional emergency medical response team as provided in K.S.A. 48-928, and amendments thereto, including any person who is serving on a volunteer basis in such capacity, for all reasonable and necessary preventive medical care and treatment for hepatitis to which such employee is exposed under circumstances arising out of and in the course of employment.

(e) It is presumed that the employer's obligation to provide the services of a health care provider, and such medical, surgical and hospital treatment, including nursing, medicines, medical and surgical supplies, ambulance, crutches, apparatus and transportation to and from the home of the injured employee to a place outside the community in which such employee resides, and within such community if the director, in the director's discretion, so orders, including transportation expenses computed in accordance with subsection (a) of K.S.A. 44-515, and amendments thereto, shall terminate upon the employee reaching maximum medical improvement. Such presumption may be overcome with medical evidence that it is more probably true than not that additional medical treatment will be necessary after such time as the employee reaches maximum medical improvement. The term "medical treatment" as used in this subsection (e) means only that treatment provided or prescribed by a licensed health care provider and shall not include home exercise programs or over-the-counter medications.

44-510i. Medical benefits; appointment of medical administrator; maximum medical fee schedule; advisory panel.

(a) The director shall appoint, subject to the approval of the secretary, a specialist in health services delivery, who shall be referred to as the medical administrator. The medical administrator shall be a person licensed to practice medicine and surgery in this state and shall be in the unclassified service under the Kansas civil service act.

(b) The medical administrator, subject to the direction of the director, shall have the duty of overseeing the providing of health care services to employees in accordance with the provisions of the workers compensation act, including but not limited to:

(1) Preparing, with the assistance of the advisory panel, the fee schedule for health care services as set forth in this section;

(2) developing, with the assistance of the advisory panel, the utilization review program for health care services as set forth in this section;

(3) developing a system for collecting and analyzing data on expenditures for health care services by each type of provider under the workers compensation act; and

(4) carrying out such other duties as may be delegated or directed by the director or secretary.

(c) The director shall prepare and adopt rules and regulations which establish a schedule of maximum fees for medical, surgical, hospital, dental, nursing, vocational rehabilitation or any other treatment or services provided or ordered by health care providers and rendered to employees under the workers compensation act and procedures for appeals and review of disputed charges or services rendered by health care providers under this section;

(1) The schedule of maximum fees shall be reasonable, shall promote health care cost containment and efficiency with respect to the workers compensation health care delivery system, and shall be sufficient to ensure availability of such reasonably necessary treatment, care and attendance to each injured employee to cure and relieve the employee from the effects of the injury. The schedule shall include provisions and review procedures for exceptional cases involving extraordinary medical procedures or circumstances and shall include costs and charges for medical records and testimony.

(2) In every case, all fees, transportation costs, charges under this section and all costs and charges for medical records and testimony shall be subject to approval by the director and shall be limited to such as are fair, reasonable and necessary. The schedule of maximum fees shall be revised as necessary at least every two years by the director to assure that the schedule is current, reasonable and fair.

(3) Any contract or any billing or charge which any health care provider, vocational rehabilitation service provider, hospital, person or institution enters into with or makes to any patient for services rendered in connection with injuries covered by the workers compensation act or the fee schedule adopted under this section, which is or may be in excess of or not in accordance with such act or fee schedule, is unlawful, void and unenforceable as a debt.

(d) There is hereby created an advisory panel to assist the director in establishing a schedule of maximum fees as required by this section. The panel shall consist of the commissioner of insurance and 11 members appointed as follows: One person shall be appointed by the Kansas medical society; one member shall be appointed by the Kansas association of

osteopathic medicine; one member shall be appointed by the Kansas hospital association; one member shall be appointed by the Kansas chiropractic association; one member shall be appointed by the Kansas physical therapy association, one member shall be appointed by the Kansas occupational therapy association and five members shall be appointed by the secretary. Of the members appointed by the secretary, two shall be representatives of employers recommended to the secretary by the Kansas chamber of commerce and industry; two shall be representatives of employees recommended to the secretary by the Kansas AFL-CIO; and one shall be a representative of providers of vocational rehabilitation services pursuant to K.S.A. 44-510g and amendments thereto. Each appointed member shall be appointed for a term of office of two years which shall commence on July 1 of the year of appointment. Members of the advisory panel attending meetings of the advisory panel, or attending a subcommittee of the advisory panel authorized by the advisory panel, shall be paid subsistence allowances, mileage and other expenses as provided in K.S.A. 75-3223 and amendments thereto.

(e) All fees and other charges paid for such treatment, care and attendance, including treatment, care and attendance provided by any health care provider, hospital or other entity providing health care services, shall not exceed the amounts prescribed by the schedule of maximum fees established under this section or the amounts authorized pursuant to the provisions and review procedures prescribed by the schedule for exceptional cases. With the exception of the rules and regulations established for the payment of selected hospital inpatient services under the diagnosis related group prospective payment system, a health care provider, hospital or other entity providing health care services shall be paid either such health care provider, hospital or other entity's usual and customary charge for the treatment, care and attendance or the maximum fees as set forth in the schedule, whichever is less. In reviewing and approving the schedule of maximum fees, the director shall consider the following:

(1) The levels of fees for similar treatment, care and attendance imposed by other health care programs or third-party payors in the locality in which such treatment or services are rendered;

(2) the impact upon cost to employers for providing a level of fees for treatment, care and attendance which will ensure the availability of treatment, care and attendance required for injured employees;

(3) the potential change in workers compensation insurance premiums or costs attributable to the level of treatment, care and attendance provided; and

(4) the financial impact of the schedule of maximum fees upon health care providers and health care facilities and its effect upon their ability to make available to employees such reasonably necessary treatment, care and attendance to each injured employee to cure and relieve the employee from the effects of the injury.

44-510j. Medical benefits; fee disputes; utilization and peer review. When an employer's insurance carrier or a self-insured employer disputes all or a portion of a bill for services rendered for the care and treatment of an employee under this act, the following procedures apply:

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

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

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

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

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

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

(1) Prior to the date of the formal hearing, the director may conduct a utilization review concerning the disputed bill. The director shall develop and implement, or contract with a qualified entity to develop and implement, utilization review procedures relating to the services rendered by providers and facilities, which services are paid for in whole or in part pursuant to the workers compensation act. The director may contract with one or more private foundations or organizations to provide utilization review of service providers pursuant to

the workers compensation act. Such utilization review shall result in a report to the director indicating whether a provider improperly utilized or otherwise rendered or ordered unjustified treatment or services or that the fees for such treatment or services were excessive and a statement of the basis for the report's conclusions. After receiving the utilization review report, the director also may order a peer review. A copy of such reports shall be provided to all parties to the dispute at least 20 days prior to the formal hearing. No person shall be subject to civil liability for libel, slander or any other relevant tort cause of action by virtue of performing a peer or utilization review under contract with the director.

(2) The formal hearing shall be conducted by hearing officers, the medical administrator or both as appointed by the director. During the formal hearing parties to the dispute shall have the right to appear or be represented and may produce witnesses, including expert witnesses, and such other relevant evidence as may be otherwise allowed under the workers compensation act. If the director finds that a provider or facility has made excessive charges or provided or ordered unjustified treatment, services, hospitalization or visits, the provider or facility may, subject to the director's order, receive payment pursuant to this section from the carrier, employer or employee for the excessive fees or unjustified treatment, services, hospitalization or visits and such provider may be ordered to repay any fees or charges collected therefor. If it is determined after the formal hearing that a provider improperly utilized or otherwise rendered or ordered unjustified treatment or services or that the fees for such treatment or services were excessive, the director may provide a report to the licensing board of the service provider with full documentation of any such determination, except that no such report shall be provided until after judicial review if the order is appealed. Any decision rendered under this section may be reviewed by the workers compensation appeals board. A party must file a notice of appeal within 10 days of the issuance of any decision under this section. The record on appeal shall be limited only to the evidence presented to the hearing officer. The decision of the director shall be affirmed unless the board determines that the decision was not supported by substantial competent evidence.

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

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

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

(h) Any health care provider, nurse, physical therapist, any entity providing medical, physical or vocational rehabilitation services or providing reeducation or training pursuant to K.S.A. 44-510g, and amendments thereto, medical supply establishment, surgical supply establishment, ambulance service or hospital which accept the terms of the workers compensation act by providing services or material thereunder shall be bound by the fees approved by the director and no injured employee or dependent of a deceased employee shall be liable for any charges above the amounts approved by the director. If the employer has knowledge of the injury and refuses or neglects to reasonably provide the services of a health care provider required by this act, the employee may provide the same for such employee, and the employer shall be liable for such expenses subject to the regulations adopted by the director. No action shall be filed in any court by a health care provider or other provider of services under this act for the payment of an amount for medical services or materials provided under the workers compensation act and no other action to obtain or attempt to obtain or collect such payment shall be taken by a health care provider or other provider of services under this act, including employing any collection service, until after final adjudication of any claim for compensation for which an application for hearing is filed with the director under K.S.A. 44-534, and amendments thereto. In the case of any such action filed in a court prior to the date an application is filed under K.S.A. 44-534, and amendments thereto, no judgment may be entered in any such cause and the action shall be stayed until after the final adjudication of the claim. In the case of an action stayed hereunder, any award of compensation shall require any

amounts payable for medical services or materials to be paid directly to the provider thereof plus an amount of interest at the rate provided by statute for judgments. No period of time under any statute of limitation, which applies to a cause of action barred under this subsection, shall commence or continue to run until final adjudication of the claim under the workers compensation act.

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

44-510k. Post-award medical benefits; application; notice; attorney fees; termination or modification of benefits.

(a)(1) At any time after the entry of an award for compensation wherein future medical benefits were awarded, the employee, employer or insurance carrier may make application for a hearing, in such form as the director may require for the furnishing, termination or modification of medical treatment. Such post-award hearing shall be held by the assigned administrative law judge, in any county designated by the administrative law judge, and the judge shall conduct the hearing as provided in K.S.A. 44-523, and amendments thereto.

(2) The administrative law judge can (A) make an award for further medical care if the administrative law judge finds that it is more probably true than not that the injury which was the subject of the underlying award is the prevailing factor in the need for further medical care and that the care requested is necessary to cure or relieve the effects of such injury, or (B) terminate or modify an award of current or future medical care if the administrative law judge finds that no further medical care is required, the injury which was the subject of the underlying award is not the prevailing factor in the need for further medical care, or that the care requested is not necessary to cure or relieve the effects of such injury.

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

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

(b) Any application for hearing made pursuant to this section shall receive priority setting by the administrative law judge, only superseded by preliminary hearings pursuant to K.S.A. 44-534a, and amendments thereto. The parties shall meet and confer prior to the hearing pursuant to this section, but a prehearing settlement conference shall not be necessary. The administrative law judge shall have authority to award medical treatment relating back to the entry of the underlying award, but in no event shall such medical treatment relate back more than six months following the filing of such application for post-award medical treatment. Reviews taken under this section shall receive priority settings before the board, only superseded by reviews for preliminary hearings. A decision shall be rendered by the board within 30 days from the time the review hereunder is submitted.

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

44-510*l*. Warning notice to injured employee.

(a) An insurer or self-insured employer shall provide the following notice to an insured worker on or with the first check for temporary disability benefits:

Warning: Acceptance of employment with a different employer that requires the performance of activities you have stated you cannot perform because of the injury for which you are receiving temporary disability benefits could constitute fraud and could result in loss of future benefits and restitution of prior workers compensation awards and benefits paid.

(b) This section shall be part of and supplemental to the workers compensation act.

44-511. Definitions; average weekly wage; volunteers; state's average weekly wage.

(a) As used in this section:

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

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

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

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

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

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

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

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

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

(5)(A) The average weekly wage of a person serving on a volunteer basis as a duly authorized law enforcement officer, ambulance attendants and drivers as provided in subsection (b) of K.S.A. 44-508, and amendments thereto, firefighter or members of regional emergency medical response teams as provided in K.S.A. 48-928, and amendments thereto, who receives no wages for such services, or who receives wages which are substantially less than the usual wages paid for such services by comparable employers to employees who are not volunteers, shall be computed on the basis of the dollar amount closest to, but not exceeding, 112½% of the state average weekly wage.

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

(C) The average weekly wage of a volunteer member of the Kansas department of civil air patrol officially engaged in the performance of functions specified in K.S.A. 48-3302, and amendments thereto, shall be deemed to be $476.38. Whenever the rates of compensation of the pay plan for persons in the classified service under the Kansas civil service act are increased for payroll periods chargeable to fiscal years commencing after June 30, 1988, the average weekly wage which is deemed to be the average weekly wage under the provisions of this subsection for a volunteer member of the Kansas department of civil air patrol shall be increased by an amount, adjusted to the nearest dollar, computed by multiplying the average of the percentage increases in all monthly steps of such pay plan by the average weekly wage deemed to be the average weekly wage of such volunteer member under the provisions of this subsection prior to the effective date of such increase in the rates of compensation of the pay plan for persons in the classified service under the Kansas civil service act.

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

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

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

employee's general occupation. The insurance coverage shall be furnished by the labor union or other association.

44-512. Time and manner of compensation payments.

Workers compensation payments shall be made at the same time, place and in the same manner as the wages of the worker were payable at the time of the accident, but upon the application of either party the administrative law judge may modify such requirements in a particular case as the administrative law judge deems just, except that: (a) Payments from the workers compensation fund established by K.S.A. 44-566a, and amendments thereto, shall be made in the manner approved by the commissioner of insurance; (b) payments from the state workers compensation self-insurance fund established by K.S.A. 44-575, and amendments thereto, shall be made in a manner approved by the secretary of health and environment; and (c) whenever temporary total disability compensation is to be paid under the workers compensation act, payments shall be made only in cash, by check or in the same manner that the employee is normally compensated for salary or wages and not by any other means, except that any such compensation may be paid by warrant of the director of accounts and reports issued for payment of such compensation from the workers compensation fund or the state workers compensation self-insurance fund under the workers compensation act.

44-512a. Failure to pay compensation when due; civil penalty; imposition and collection; attorney fees; other remedies.

(a) In the event any compensation, including medical compensation, which has been awarded under the workers compensation act, is not paid when due to the person, firm or corporation entitled thereto, the employee shall be entitled to a civil penalty, to be set by the administrative law judge and assessed against the employer or insurance carrier liable for such compensation in an amount of not more than $100 per week for each week any disability compensation is past due and in an amount for each past due medical bill equal to the larger of either the sum of $25 or the sum equal to 10% of the amount which is past due on the medical bill, if: (1) Service of written demand for payment, setting forth with particularity the items of disability and medical compensation claimed to be unpaid and past due, has been made personally or by registered mail on the employer or insurance carrier liable for such compensation and its attorney of record; and (2) payment of such demand is thereafter refused or is not made within 20 days from the date of service of such demand.

(b) After the service of such written demand, if the payment of disability compensation or medical compensation set forth in the written demand is not made within 20 days from the date of service of such written demand, plus any civil penalty, as provided in subsection (a), if such compensation was in fact past due, then all past due compensation and any such penalties shall become immediately due and payable. Service of written demand shall be required only once after the final award. Subsequent failures to pay compensation, including medical compensation, shall entitle the employee to apply for the civil penalty without demand. The employee may maintain an action in the district court of the county where the cause of action arose for the collection of such past due disability compensation and medical compensation, any civil penalties due under this section and reasonable attorney fees incurred in connection with the action.

(c) The remedies of execution, attachment, garnishment or any other remedy or procedure for the collection of a debt now provided by the laws of this state shall apply to such action and also to all judgments entered under the provisions of K.S.A. 44-529 and amendments thereto, except that no exemption granted by any law shall apply except the homestead exemption granted and guaranteed by the constitution of this state.

44-512b. Failure to pay compensation prior to award without just cause; interest, penalty.

(a) Whenever the administrative law judge or board finds, upon a hearing conducted pursuant to K.S.A. 44-523 and amendments thereto or upon review or appeal of an award entered in such a hearing, that there was not just cause or excuse for the failure of the employer or insurance carrier to pay, prior to an award, the compensation claimed to the person entitled thereto, the employee shall be entitled to interest on the amount of the disability compensation found to be due and unpaid at the rate of interest prescribed pursuant to subsection (e)(1) of K.S.A. 16-204 and amendments thereto. Such interest shall be assessed against the employer or insurance carrier liable for the compensation and shall accrue from the date such compensation was due.

(b) Interest assessed pursuant to this section shall be considered a penalty and shall not be considered a loss or a loss adjustment expense by an insurance carrier in the promulgation of rates for workers compensation insurance.

(c) This section shall be part of and supplemental to the workers compensation act.

44-513a. Minors entitled to compensation; payment.

Whenever a minor person shall be entitled to compensation under the provisions of the workers compensation act, the administrative law judge is authorized to direct such compensation to be paid in accordance with K.S.A. 59-3050 through 59-3095, and amendments thereto.

44-513b. Same; act supplemental.

The provisions of this act shall be supplemental to and a part of the workmen's compensation act.

44-514. Payments not assignable; exception, orders for support.

(a) Except as provided in subsection (b) and the income withholding act, K.S.A. 2013 Supp. 23-3101 et seq., and amendments thereto, no claim for compensation, or compensation agreed upon, awarded, adjudged, or paid, shall be assignable or subject to levy, execution, attachment, garnishment, or any other remedy or procedure for the recovery or collection of a debt, and this exemption cannot be waived.

(b) Claims for compensation, or compensation agreed upon, adjudged or paid, which are paid to a worker on a

weekly basis or by lump sum shall be subject to enforcement of an order for support by means of voluntary or involuntary assignment of a portion of the compensation.

(1) Any involuntary assignment shall be obtained by motion filed within the case which is the basis of the existing order of support.

(A) Any motion seeking an involuntary assignment of compensation shall be served on the claimant and the claimant's counsel to the workers compensation claim, if known, the motion shall set forth:

(i) The amount of the current support order to be enforced;

(ii) the amount of any arrearage alleged to be owed under the support order;

(iii) the identity of the payer of the compensation to the claimant, if known; and

(iv) whether the assignment requested seeks to attach compensation for current support or arrearages or both.

(B) Motions for involuntary assignments of compensation shall be granted. The relief granted for:

(i) Current support shall be collectible from benefits paid on a weekly basis but shall not exceed 25% of the workers gross weekly compensation excluding any medical compensation and rehabilitation costs paid directly to providers.

(ii) Past due support shall be collectible from lump-sum settlements, judgments or awards but shall not exceed 40% of a lump sum, excluding any medical compensation and rehabilitation costs paid directly to providers.

(2) In any proceeding under this subsection, the court may also consider the modification of the existing support order upon proper notice to the other interested parties.

(3) Any order of involuntary assignment of compensation shall be served upon the payer of compensation and shall set forth the:

(A) Amount of the current support order;

(B) amount of the arrearage owed, if any;

(C) applicable percentage limitations;

(D) name and address of the payee to whom assigned sums shall be disbursed by the payer; and

(E) date the assignment is to take effect and the conditions for termination of the assignment.

(4) For the purposes of this section, "order for support" means any order of any Kansas court, authorized by law to issue such an order, which provides for the payment of funds for the support of a child or for maintenance of a spouse or ex-spouse, and includes such an order which provides for payment of an arrearage accrued under a previously existing order and reimbursement orders, including but not limited to, an order established pursuant to K.S.A. 39-718a and amendments thereto; K.S.A. 39-718b and amendments thereto; or an order established pursuant to the uniform interstate family support act and amendments thereto.

(5) For all purposes under this section, each obligation to pay child support or order for child support shall be satisfied prior to satisfaction of any obligation to pay or order for maintenance of a spouse or ex-spouse.

44-515. Medical examinations; suspension of benefits; travel and living expenses; availability of reports; disqualification of certain medical evidence; consideration of health care providers' opinions.

(a) After an employee sustains an injury, the employee shall, upon request of the employer, submit to an examination at any reasonable time and place by any one or more reputable health care providers, selected by the employer, and shall so submit to an examination thereafter at intervals during the pendency of such employee's claim for compensation, upon the request of the employer, but the employee shall not be required to submit to an examination oftener than twice in any one month, unless required to do so in accordance with such orders as may be made by the director. All benefits shall be suspended to an employee who refuses to submit to such examination or examinations until such time as the employee complies with the employer's request. The suspension of benefits shall occur even if the employer is under preliminary order to provide such benefits. Any employee so submitting to an examination or such employee's authorized representative shall upon written request be entitled to receive and shall have delivered to such employee a copy of the health care provider's report of such examination within a reasonable amount of time after such examination, which report shall be identical to the report submitted to the employer. If the employee is notified to submit to an examination before any health care provider in any town or city other than the residence of the employee at the time that the employee received an injury, the employee shall not be required to submit to an examination until such employee has been furnished with sufficient funds to pay for transportation to and from the place of examination at the rate prescribed for compensation of state officers and employees under K.S.A. 75-3203a, and amendments thereto, for each mile actually and necessarily traveled to and from the place of examination, any turnpike or other tolls and any parking fees actually and necessarily incurred, and in addition the sum of $15 per day for each full day that the employee was required to be away from such employee's residence to defray such employee's board and lodging and living expenses. The employee shall not be liable for any fees or charge of any health care provider selected by the employer for making any examination of the employee. The employer or the insurance carrier of the employer of any employee making claim for compensation under the workers compensation act shall be entitled to a copy of the report of any health care provider who has examined or treated the employee in regard to such claim upon written request to the employee or the employee's attorney within a reasonable amount of time after such examination or treatment, which report shall be identical to the report submitted to the employee or the employee's attorney.

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

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

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

(e) Any health care provider's opinion, whether the provider is a treating health care provider or is an examining health care provider, regarding a claimant's need for medical treatment, inability to work, prognosis, diagnosis and disability rating shall be considered and given appropriate weight by the trier of fact together with consideration of all other evidence.

44-516. Medical examination by neutral health care provider.

(a) In case of a dispute as to the injury, the director, in the director's discretion, or upon request of either party, may employ one or more neutral health care providers, not exceeding three in number, who shall be of good standing and ability. The health care providers shall make such examinations of the injured employee as the director may direct. The report of any such health care provider shall be considered by the administrative law judge in making the final determination.

(b) If at least two medical opinions based on competent medical evidence disagree as to the percentage of functional impairment, such matter may be referred by the administrative law judge to an independent health care provider who shall be agreed upon by the parties. Where the parties cannot agree, an independent healthcare provider shall be selected by the administrative law judge. The health care provider agreed to by the parties or selected by the administrative law judge pursuant to this section shall issue an opinion regarding the employee's functional impairment which shall be considered by the administrative law judge in making the final determination.

44-518. Refusal of medical examination; effect.

If the employee refuses to submit to an examination upon request of the employer as provided for in K.S.A. 44-515 and amendments thereto or if the employee or the employee's health care provider unnecessarily obstructs or prevents such examination by the health care provider of the employer, the employee's right to payment of compensation shall be suspended until the employee submits to an examination and until such examination is completed. No compensation shall be payable under the workers compensation act during the period of suspension. If the employee refuses to submit to an examination while any proceedings are pending for the purpose of determining the amount of compensation due, such proceedings shall be dismissed upon showing being made of the refusal of the employee to submit to an examination.

44-519. Certificate of health care provider as evidence.

Except in preliminary hearings conducted under K.S.A.

44-534a and amendments thereto, no report of any examination of any employee by a health care provider, as provided for in the workers compensation act and no certificate issued or given by the health care provider making such examination, shall be competent evidence in any proceeding for the determining or collection of compensation unless supported by the testimony of such health care provider, if this testimony is admissible, and shall not be competent evidence in any case where testimony of such health care provider is not admissible.

44-520. Notice of injury.

(a)(1) Proceedings for compensation under the workers compensation act shall not be maintainable unless notice of injury by accident or repetitive trauma is given to the employer by the earliest of the following dates:

(A) 20 calendar days from the date of accident or the date of injury by repetitive trauma;

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

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

Notice may be given orally or in writing.

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

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

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

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

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

44-521. Agreements; approval.

Compensation due under this act may be settled by agreement; subject to the provisions contained in K.S.A. 44-527.

44-523. Hearing procedure; time limitations on evidence and entry of award; prehearing settlement conference; recusal of administrative law judge; closure of claims; lack of prosecution.

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

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

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

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

(3) on application for good cause shown.

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

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

(e)(1) If a party or a party's attorney believes that the administrative law judge to whom a case is assigned cannot afford that party a fair hearing in the case, the party or attorney may file a motion for change of administrative law judge. A party or a party's attorney shall not file more than

one motion for change of administrative law judge in a case. The administrative law judge shall promptly hear the motion informally upon reasonable notice to all parties who have appeared in the case. Notwithstanding the provisions of K.S.A. 44-552, and amendments thereto, the administrative law judge shall decide, in the administrative law judge's discretion, whether or not the hearing of such motion shall be taken down by a certified shorthand reporter. If the administrative law judge disqualifies the administrative law judge's self, the case shall be assigned to another administrative law judge by the director. If the administrative law judge refuses to disqualify the administrative law judge's self, the party seeking a change of administrative law judge may, within 10 days of the refusal, file an appeal with the workers compensation appeals board.

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

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

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

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

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

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

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

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

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

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

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

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

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

44-525. Form of findings and awards; effective date.

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

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

(c) In the event the employee has been overpaid temporary total disability benefits as described in subsection (b) of K.S.A. 44-534a, and amendments thereto, and the employee is entitled to additional disability benefits, the administrative law judge shall provide for the application of a credit against such

benefits. The credit shall first be applied to the final week of any such additional disability benefit award and then to each preceding week until the credit is exhausted.

44-526. Filing agreements, awards, etc.

Any award of compensation may be modified by subsequent written agreement of the parties, but no such agreement modifying an award shall be valid as against the workman unless such agreement or a copy thereof be filed by the employer in the office of the director within sixty (60) days after the execution of such agreement.

44-527. Final receipts.

At the time of making any final payment of compensation, the employer shall be entitled to a final receipt for compensation, executed and acknowledged or verified by the worker, which final receipt may be in form a release of liability under this act, and every such final receipt for compensation or release of liability or a copy thereof shall be filed by the employer in the office of the director within 60 days after the date of execution of such final receipt or release of liability, and if the employer shall fail or neglect to so file such final receipt or release of liability, the same shall be void as against the worker.

The director shall accept, receipt for, and file every agreement, finding, award, agreement modifying an award, final receipt for compensation or release of liability or copy thereof, and record and index same, and every such agreement, finding, award, agreement modifying an award, final receipt or release, shall be considered as approved by the director and shall stand as approved unless said director shall, within 20 days of the date of the receipt thereof, disapprove same in writing and notify each of the parties of his disapproval, giving his reasons therefor, sending a copy of the same to each of the parties by certified mail, return receipt requested. No proceedings shall be instituted by either party to set aside any such agreement, release of liability, final receipt for compensation or agreement modifying an award, unless such proceedings are commenced within one year after the date any such agreement, release of liability, final receipt for compensation or agreement modifying an award has been so filed and approved by the director.

44-528. Review and modification of awards; reinstatement; cancellation; effective date.

(a) Except lump-sum settlements approved by the director or administrative law judge, any award or modification thereof may be reviewed by the administrative law judge for good cause shown upon the application of the employee, employer, dependent, insurance carrier or any other interested party. In connection with such review, the administrative law judge may appoint one or two health care providers to examine the employee and report to the administrative law judge. The administrative law judge shall hear all competent evidence offered and if the administrative law judge finds that the award has been obtained by fraud or undue influence, that the award was made without authority or as a result of serious misconduct, that the award is excessive or inadequate or that the functional impairment or work disability of the employee has increased or diminished, the administrative law judge may modify such award, or reinstate a prior award, pursuant to the provisions set forth in K.S.A. 44-510b, 44-510c, 44-510d or 44-510e, and amendments thereto, as may be applicable.

(b) If the administrative law judge finds that the employee has absented and continues to be absent so that a reasonable examination cannot be made of the employee by a health care provider selected by the employer, or has departed beyond the boundaries of the United States, the administrative law judge may modify the award and reduce compensation or may cancel the award and end the compensation.

(c) The number of reviews under this section shall be limited pursuant to rules and regulations adopted by the director to avoid abuse.

(d) Any modification of an award under this section on the basis that the functional impairment or work disability of the employee has increased or diminished shall be effective as of the date that the increase or diminishment actually occurred, except that in no event shall the effective date of any such modification be more than six months prior to the date the application was made for review and modification under this section.

44-529. Judgment on agreement or awards.

At any time before final payment of compensation has been made under, or pursuant to any award or agreement of the parties modifying same, the workman, or his dependents, may upon notice to the employer apply to the director for an award against the employer in a lump sum equal to 95 percent of the amount of payments due and unpaid and prospectively due under said award, and unless the proceedings be stayed as hereinafter provided in this act, or unless said award be canceled as herein provided in this act or the liability be redeemed as provided in this act, the director shall hear all competent evidence offered and if satisfied that the workman's, or dependent's, application for award is made because of doubt as to the security of his compensation and supported by competent evidence that he is not secure as to the payments of his compensation, shall, unless there shall be given a certificate of a licensed or authorized insurance company or reciprocal or interinsurance exchange or association that the amount of compensation to the workman is insured by it, or a proper bond or undertaking approved by the director to secure the payment of the compensation due to such workman, compute the sum and enter an award accordingly, and thereafter a certified copy of said award may be filed in the office of the clerk of the district court where the cause of action arose and said district court may, upon ten (10) days' notice to the employer, enter a judgment according to the terms and provisions of said award.

44-530. Staying proceedings upon an award.

In any proceedings upon the application of a workman for judgment against workman's employer upon an award hereinbefore provided and before judgment has been granted, the employer may stay proceedings upon such application by filing with the clerk of the district court a bond to be approved by the judge of the district court undertaking to secure the payment of the compensation as in such award provided, or by

filing with such clerk a certificate of a licensed or authorized insurance company or reciprocal or interinsurance exchange or association that the amount of compensation to the workman is insured by it.

44-531. Redemption of liability; lump-sum payment of award; exception.

(a) Where all parties agree to the payment of all or any part of compensation due under the workers compensation act or under any award or judgment, and where it has been determined at a hearing before the administrative law judge that it is for the best interest of the injured employee or the dependents of a deceased employee, or that it will avoid undue expense, litigation or hardship to any party or parties, the administrative law judge may permit the employer to redeem all or any part of the employer's liability under the workers compensation act by the payment of compensation in a lump-sum. The employer shall be entitled to an 8% discount except as provided in subsection (a) of K.S.A. 44-510b, and amendments thereto, on the amount of any such lump-sum payment that is not yet due at the time of the award. Upon paying such lump-sum the employer shall be released and discharged of and from all liability under the workers compensation act for that portion of the employer's liability redeemed under this section.

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

(c) The parties, by agreement and with approval of an administrative law judge, may enter into a compromise lump-sum settlement in either permanent total or permanent partial disability cases which prorates the lump-sum settlement over the life expectancy of the injured worker. When such an agreement has been approved, neither the weekly compensation rate paid throughout the case nor the maximum statutory weekly rate applicable to the injury shall apply. No compensation rate shall exceed the maximum statutory weekly rate as of the date of the injury. Instead, the prorated rate set forth in the approved settlement documents shall control and become the rate for that case. This section shall be retroactive in effect.

44-532. Subrogation of insurer or group-funded pool to rights and duties of employer; methods of securing payment of compensation; failure to secure; penalties; notice to director by insurers; change of status notice by self-insurers and group-funded pool members; eligibility to self-insure; merging employers.

(a) Where the payment of compensation of the employee or the employee's dependents is insured by a policy or policies, at the expense of the employer, or the employer is a member of a qualified group-funded workers compensation pool, the insurer or the qualified group-funded workers compensation pool shall be subrogated to the rights and duties under the workers compensation act of the employer so far as appropriate, including the immunities provided by K.S.A. 44-501, and amendments thereto.

(b) Every employer shall secure the payment of compensation to the employer's employees by insuring in one of the following ways: (1) By insuring and keeping insured the payment of such compensation with an insurance carrier authorized to transact the business of workers compensation insurance in the state of Kansas; (2) by showing to the director that the employer carries such employer's own risk and is what is known as a self-insurer and by furnishing proof to the director of the employer's financial ability to pay such compensation for the employer's self; (3) by maintaining a membership in a qualified group-funded workers compensation pool. The cost of carrying such insurance or risk shall be paid by the employer and not the employee.

(c) The knowing and intentional failure of an employer to secure the payment of workers compensation to the employer's employees as required in subsection (b) of this section is a class A misdemeanor.

(d) In addition, whenever the director has reason to believe that any employer has engaged or is engaging in the knowing and intentional failure to secure the payment of workers compensation to the employer's employees as required in subsection (b) of this section, the director shall issue and serve upon such employer a statement of the charges with respect thereto and shall conduct a hearing in accordance with the Kansas administrative procedure act, wherein the employer may be liable to the state for a civil penalty in an amount equal to twice the annual premium the employer would have paid had such employer been insured or $25,000, whichever amount is greater.

(e) The director shall not assess such a fine against a self-employed subcontractor for failure of the subcontractor to secure compensation for the subcontractor personally, however, the director shall enforce the provisions of this section for failure of the subcontractor to secure compensation for any other employee of the subcontractor as otherwise provided by law.

(f) Any civil penalty imposed or final action taken under this section shall be subject to review in accordance with the act for judicial review of agency actions in the district court of Shawnee county.

(g) All moneys received under this section for costs assessed or monetary penalties imposed shall be remitted to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of the workers compensation fund.

(h)(1) Every insurance carrier writing workers compensation insurance for any employment covered under the workers compensation act shall file, with the director or the director's designee, written notice of the issuance, nonrenewal or cancellation of a policy or contract of insurance, or any endorsement, providing workers compensation coverage, within

10 days after such issuance, nonrenewal or cancellation. Every such insurance carrier shall file, with the director, written notice of all such policies, contracts and endorsements in force on the effective date of this act.

(2) Every employer covered by the workers compensation act who is a qualified self-insurer shall give written notice to the director or the director's designee, if such employer changes from a self-insurer status to insuring through an insurance carrier or by maintaining a membership in a qualified group-funded workers compensation pool, such notice to be given within 10 days after the effective date of such change. Every self-insurer shall file with the director annually a report verifying the employer's continuing ability to pay compensation to the employer's employees.

(3) Every employer covered by the workers compensation act who is a member of a qualified group-funded workers compensation pool shall give written notice to the director or the director's designee, if such employer changes from a group-funded workers compensation pool to insuring through an insurance carrier or becoming a self-insurer, such notice to be given within 10 days after the effective date of such change.

(4) The mailing of any written notice or report required by this subsection (d) in a stamped envelope within the prescribed time shall comply with the requirements of this subsection.

(5) The director shall provide by regulation for the forms of written notices and reports required by this subsection (d).

(i) As used in this section, "qualified group-funded workers compensation pool" means any qualified group-funded workers compensation pool under K.S.A. 44-581 through 44-591, and amendments thereto, or any group-funded pool under the Kansas municipal group-funded pool act which includes workers compensation and employers' liability under the workers compensation act.

(j) A private firm shall not be eligible to apply to become a self-insurer unless it has been in continuous operation for at least five years or is purchasing an existing self-insured Kansas firm, plant or facility and the operation of the purchased firm, plant or facility: (1) Has been in continuous operation in Kansas for at least 10 years; (2) has generated an after-tax profit of at least $1,000,000 annually for the preceding three consecutive years; and (3) has a ratio of debt to equity of not greater than 3.5 to 1. As used in this subsection, "debt" means the sum of long-term borrowing maturing in excess of one year plus the current portion of long-term borrowing plus short-term financial institution borrowing plus commercial paper borrowing, and "equity" means the sum of the book value of stock plus paid-in capital plus retained earnings. The method for calculating the amount of security required of self-insureds shall be reviewed by an actuary every five years, beginning in fiscal year 1997. The costs for these actuarial studies shall be paid from the workers compensation fee fund.

(k) A corporation or other entity whose current identity is attributable to a merger or other transformation whereby the whole or a substantial part of a previous entity's assets and income have been transferred to it, and its liabilities have not increased beyond the financial review requirements of the director, which qualified under its previous identity as a self-insurer under other provisions of this statute, and amendments thereto, may apply for renewal as a self-insurer under its new name. The director may grant the application for renewal if satisfied that the new entity meets all necessary financial criteria for renewal that would have been applied to the previous self-insured entity. An application under these provisions shall be limited to an entity seeking renewal based upon the prior self-insured status of another entity or entities.

44-532a. Liability of workers compensation fund for uninsured or insufficiently self-insured insolvent employers; cause of action against such employers.

(a) If an employer has no insurance or has an insufficient self-insurance bond or letter of credit to secure the payment of compensation, as provided in subsection (b)(1) and (2) of K.S.A. 44-532, and amendments thereto, and such employer is financially unable to pay compensation to an injured worker as required by the workers compensation act, or such employer cannot be located and required to pay such compensation, the injured worker may apply to the director for an award of the compensation benefits, including medical compensation, to which such injured worker is entitled, to be paid from the workers compensation fund. Whenever a worker files an application under this section, the matter shall be assigned to an administrative law judge for hearing. If the administrative law judge is satisfied as to the existence of the conditions prescribed by this section, the administrative law judge may make an award, or modify an existing award, and prescribe the payments to be made from the workers compensation fund as provided in K.S.A. 44-569, and amendments thereto. The award shall be certified to the commissioner of insurance, and upon receipt thereof, the commissioner of insurance shall cause payment to be made to the worker in accordance therewith.

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

44-534. Proceedings; time limitations.

(a) Whenever the employer, worker, Kansas workers compensation fund or insurance carrier cannot agree upon the worker's right to compensation under the workers compensation act or upon any issue in regard to workers compensation benefits due the injured worker thereunder, the employer, worker, Kansas worker's compensation fund or insurance carrier may apply in writing to the director for a determination of the benefits or compensation due or claimed to be due. The application shall be in the form prescribed by the rules and regulations of the director and shall set forth the substantial and material facts in relation to the claim. Whenever an application is filed under this section, the matter shall be assigned to an administrative law judge. The director shall forthwith mail a certified copy of the application to the adverse party. The administrative law judge shall proceed, upon due and reasonable notice to the parties, which shall not be less than 20 days, to hear all evidence in relation thereto and to make findings concerning the amount of compensation, if any due to the worker.

(b) No proceeding for compensation shall be maintained under the workers compensation act unless an application for a hearing is on file in the office of the director within three years of the date of the accident or within two years of the date of the last payment of compensation, whichever is later.

44-534a. Preliminary hearings; orders for medical treatment and temporary total disability benefits; review of preliminary findings and orders; reimbursement from workers compensation fund.

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

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

(b) If compensation in the form of medical benefits or temporary total disability benefits has been paid by the employer or the employer's insurance carrier either voluntarily or pursuant to an award entered under this section and, upon a full hearing on the claim, the amount of compensation to which the employee is entitled is found to be less than the amount of compensation paid or is totally disallowed, the employer and the employer's insurance carrier shall be reimbursed from the workers compensation fund established in K.S.A. 44-566a, and amendments thereto, for all amounts of compensation so paid which are in excess of the amount of compensation the employee is entitled to less any amount deducted from additional disability benefits due the employee pursuant to subsection (c) of K.S.A. 44-525, and amendments thereto, as determined in the full hearing on the claim. The director shall determine the amount of compensation paid by the employer or insurance carrier which is to be reimbursed under this

subsection, and the director shall certify to the commissioner of insurance the amount so determined. Upon receipt of such certification, the commissioner of insurance shall cause payment to be made to the employer or the employer's insurance carrier in accordance therewith. No reimbursement shall be certified unless the request is made by the employer or employer's insurance carrier within one year of the final award.

44-535. When the right to compensation accrues.

The right to compensation shall be deemed in every case, including cases where death results from the injury, to have accrued to the injured workman or his dependents or legal representatives at the time of the accident, and the time limit in which to commence proceedings for compensation therefor shall run as against him, his legal representatives and dependents from the date of the accident.

44-536. Attorney fees; limitations; lien; review of contracts and fees claimed; matters to consider upon review; powers and duties of director and administrative law judge.

(a) With respect to any and all proceedings in connection with any initial or original claim for compensation, no claim of any attorney for services rendered in connection with the securing of compensation for an employee or the employee's dependents, whether secured by agreement, order, award or a judgment in any court shall exceed a reasonable amount for such services or 25% of the amount of compensation recovered and paid, whichever is less, in addition to actual expenses incurred, and subject to the other provisions of this section. Except as hereinafter provided in this section, in death cases, total disability and partial disability cases, the amount of attorney fees shall not exceed 25% of the sum which would be due under the workers compensation act beyond 415 weeks of permanent total disability based upon the employee's average weekly wage prior to the date of the accident and subject to the maximum weekly benefits provided in K.S.A. 44-510c, and amendments thereto.

(b) All attorney fees in connection with the initial or original claim for compensation shall be fixed pursuant to a written contract between the attorney and the employee or the employee's dependents, which shall be subject to approval by the director in accordance with this section. Every attorney, whether the disposition of the original claim is by agreement, settlement, award, judgment or otherwise, shall file the attorney contract with the director for review in accordance with this section. The director shall review each such contract and the fees claimed thereunder as provided in this section and shall approve such contract and fees only if both are in accordance with all provisions of this section. Any claims for attorney fees not in excess of the limits provided in this section and approved by the director shall be enforceable as a lien on the compensation due or to become due. The director shall specifically and individually review each claim of an attorney for services rendered under the workers compensation act in each case of a settlement agreement under K.S.A. 44-521, and amendments thereto, or a lump-sum payment under K.S.A. 44-531, and amendments thereto, as to the reasonableness thereof. In reviewing the reasonableness of such claims for attorney fees, the director shall consider the other provisions of this section and the following:

(1) The written offers of settlement received by the employee prior to execution of a written contract between the employee and the attorney; the employer shall attach to the settlement worksheet copies of any written offers of settlement which were sent to the employee before the employer was aware that the employee had hired an attorney;

(2) the time and labor required, the novelty and difficulty of the questions involved and the skill requisite to perform the legal services properly;

(3) the likelihood, if apparent to the employee or the employee's dependents, that the acceptance of the particular case will preclude other employment by the attorney;

(4) the fee customarily charged in the locality for similar legal services;

(5) the amount of compensation involved and the results obtained;

(6) the time limitations imposed by the employee, by the employee's dependents or by the circumstances;

(7) the nature and length of the professional relationship with the employee or the employee's dependents; and

(8) the experience, reputation and ability of the attorney or attorneys performing the services.

(c) No attorney fees shall be charged with respect to compensation for medical expenses, except where an allowance is made for proposed or future treatment as a part of a compromise settlement. No attorney fees shall be charged with respect to vocational rehabilitation benefits.

(d) No attorney fees shall be charged in connection with any temporary total disability compensation unless the payment of such compensation in the proper amount is refused, or unless such compensation is terminated by the employer and the payment of such compensation is obtained or reinstated by the efforts of the attorney, whether by agreement, settlement, award or judgment.

(e) With regard to any claim where there is no dispute as to any of the material issues prior to representation of the claimant or claimants by an attorney, or where the amount to be paid for compensation does not exceed the written offer made to the claimant or claimants by the employer prior to execution of a written contract between the employee and an attorney, the fees to any such attorney shall not exceed either the sum of $250 or a reasonable fee for the time actually spent by the attorney, as determined by the director, whichever is greater, exclusive of reasonable attorney fees for any representation by such attorney in reference to any necessary probate proceedings. With regard to any claim where the amount to be paid for compensation does exceed the written offer made prior to representation, fees for services rendered by an attorney shall not exceed the lesser of (1) a reasonable amount for such services; (2) an amount equal to the total of 50% of that portion of the amount of compensation recovered and paid, which is in excess of the amount of compensation offered to the employee by the employer prior to the execution of a written contract between

the employee and the attorney; or (3) 25% of the total amount of compensation recovered and paid as described in subsection (a).

(f) All attorney fees for representation of an employee or the employee's dependents shall be only recoverable from compensation actually paid to such employee or dependents, except as specifically provided otherwise in subsection (g) and (h).

(g) In the event any attorney renders services to an employee or the employee's dependents, subsequent to the ultimate disposition of the initial and original claim, and in connection with an application for review and modification, a hearing for additional medical benefits, an application for penalties or otherwise, such attorney shall be entitled to reasonable attorney fees for such services, in addition to attorney fees received or which the attorney is entitled to receive by contract in connection with the original claim, and such attorney fees shall be awarded by the director on the basis of the reasonable and customary charges in the locality for such services and not on a contingent fee basis.

(1) If the services rendered under this subsection by an attorney result in an additional award of disability compensation, the attorney fees shall be paid from such amounts of disability compensation.

(2) If such services involve no additional award of disability compensation, but result in an additional award of medical compensation, penalties, or other benefits, the director shall fix the proper amount of such attorney fees in accordance with this subsection and such fees shall be paid by the employer or the workers compensation fund, if the fund is liable for compensation pursuant to K.S.A. 44-567, and amendments thereto, to the extent of the liability of the fund.

(3) If the services rendered herein result in a denial of additional compensation, penalties, or other benefits, and it is determined that the attorney engaged in frivolous prosecution of the claim, the employer and insurance carrier shall not be liable for any portion of the attorney fees incurred for such services.

(h) Any and all disputes regarding attorney fees, whether such disputes relate to which of one or more attorneys represents the claimant or claimants or is entitled to the attorney fees, or a division of attorney fees where the claimant or claimants are or have been represented by more than one attorney, or any other disputes concerning attorney fees or contracts for attorney fees, shall be heard and determined by the administrative law judge, after reasonable notice to all interested parties and attorneys.

(i) After reasonable notice and hearing before the administrative law judge, any attorney found to be in violation of any provision of this section shall be required to make restitution of any excess fees charged.

44-536a. Signing of pleadings, motions and other papers; liability for frivolous filings.

(a) Every pleading, motion and other paper provided for by the workers compensation act of any party, who is represented by an attorney, shall be signed by at least one attorney of record in the attorney's individual name, and the attorney's address and telephone number shall be stated. A pleading, motion or other paper provided for by the workers compensation act of any party who is not represented by an attorney shall be signed by the party and shall state the party's address.

(b) Except when otherwise specifically provided by rule and regulation of the director, pleadings need not be verified or accompanied by an affidavit. The signature of a person constitutes a certificate by the person (1) that the person has read the pleading, (2) that to the best of the person's knowledge, information and belief formed after reasonable inquiry, the pleading is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification or reversal of existing law, and (3) that the pleading is not imposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of resolving disputed claims for benefits.

(c) If any pleading, motion or other paper provided for by the workers compensation act is not signed, such pleading, motion or other paper shall not be accepted and shall be void unless it is signed promptly after the omission is called to the attention of the pleader or movant.

(d) If a pleading, motion or other paper provided for by the workers compensation act is signed in violation of this section, the administrative law judge, director or board, upon motion or upon its own initiative upon notice and after opportunity to be heard, shall impose upon the person who signed such pleading or a represented party, or both, an appropriate sanction, which may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the pleading, motion or other paper, including reasonable attorney fees.

44-542a. Election by individual employer, partner or self-employed person.

Each individual employer, partner, limited liability company member or self-employed person may elect to bring such employers within the provisions of the workers compensation act, by securing and keeping insured such liability in accordance with clause (1) of subsection (b) of K.S.A. 44-532, and amendments thereto. Such insurance coverage shall clearly indicate the intention of the parties to provide coverage for such employer, partner, limited liability company member or self-employed person. When such election is made, the insurance carrier or its agent shall cause to be filed with the director a written statement of election to accept thereunder so that such employer, partner, limited liability company member or self-employed person is treated as an employee for the purposes of the workers compensation act pursuant to such election. This election shall be effective until such time as such employer, partner, limited liability company member or self-employed person ceases to be insured in accordance with clause (1) of subsection (b) of K.S.A. 44-532, and amendments thereto, whereupon a written statement withdrawing such election shall be filed with the director.

44-543. Election by certain employees.

(a) As used in this section:

(1) "Nonprofit organization" means those nonprofit organizations exempt from federal income tax pursuant to section 501(c) of the internal revenue code of 1986, as in effect on the effective date of this act.

(2) "Compensation" does not include actual and necessary expenses that are incurred by a volunteer officer, director or trustee in connection with the services that the volunteer performs for a nonprofit organization and that are reimbursed to the volunteer or otherwise paid.

(3) "Volunteer officer, director or trustee" means an officer, director or trustee who performs services for a nonprofit organization but does not receive compensation, either directly or indirectly, for those services.

(b) Any employee of a corporate employer who owns 10% or more of the outstanding stock of such employer, may file with the director, prior to injury, a written declaration that the employee elects not to accept the provisions of the workers compensation act, and at the same time, the employee shall file a duplicate of such election with the employer. Such election shall be valid only during the employee's term of employment with such employer. Any employee so electing and thereafter desiring to change the employee's election may do so by filing a written declaration to that effect with the director and a duplicate of such election with the employer. Any contract in which an employer requires of an employee as a condition of employment that the employee elect not to come within the provisions of the workers compensation act, shall be void. Any written declarations filed pursuant to this section shall be in such form as may be required by regulation of the director.

(c) Any noncompensated volunteer officer, director or trustee of a nonprofit corporation as defined in clause 3 of subsection (a) may elect to be covered by the provisions of the workers compensation act by filing with the director, prior to injury, a written declaration that the officer, director or trustee elects to accept the provisions of the workers compensation act, and at the same time, the person shall file a duplicate of such election with the employer and the employer's insurance company or qualified group-funded workers compensation pool.

44-545. Defenses available in certain cases.

In an action to recover damages for an injury by accident arising out of and in the course of employment which was sustained by an employee, who is an employee subject to the provisions of the workmen's compensation act other than by election filed pursuant to K.S.A. 44-542a, or for death resulting from an injury so sustained, in which recovery is sought upon the ground of want of due care of the employer or of any officer, agent or servant of the employer and where such employer at the time of the accident was subject to the provisions of the workmen's compensation act, it shall be a defense for such employer in all cases where said employee has elected not to come within the provisions of the workmen's compensation act pursuant to a valid declaration of election as provided in K.S.A. 44-543: (a) That the employee either expressly or impliedly assumed the risk of the hazard complained of; (b) that the injury or death was caused in whole or in part by the want of due care of a fellow servant; or (c) that said employee was guilty of contributory negligence: Provided, That none of these defenses shall be available where the injury was caused by the willful negligence of such employer, or of any managing officer, or of managing agent of said employer.

44-549. Hearings, venue; final award of administrative law judge; hearing powers of director and board.

(a) All hearings upon all claims for compensation under the workers compensation act shall be held by the administrative law judge in person in the county in which the accident occurred, or by video conferencing or telephone conference unless otherwise mutually agreed by the employee and employer. The award, finding, decision or order of an administrative law judge when filed in the office of the director shall be deemed to be the final award, finding, decision or order of the administrative law judge.

(b) The director and the board, for the purpose of the workers compensation act, shall have power to administer oaths, certify to official acts, take depositions, issue subpoenas, compel the attendance of witnesses and the production of books, accounts, papers, documents, and records to the same extent as is conferred on district courts of this state under the code of civil procedure.

44-550. Records of proceedings, documents; custody and preservation.

The director shall designate a person to maintain a full, true and correct record of all proceedings of the director, of all documents or papers filed by the director, or with the director, of all awards, orders and decisions made by the director and such person shall be responsible to the director for the safe custody and preservation of all such papers and documents.

44-550b. Records open to public inspection, exceptions.

(a) All records provided to be maintained under K.S.A. 44-550 and amendments thereto and not withstanding the provisions of K.S.A. 45-215, et seq., and amendments thereto, shall be open to public inspection, except:

(1) Records relating to financial information submitted by an employer to qualify as a self-insurer pursuant to K.S.A 44-532 and amendments thereto;

(2) records which relate to utilization review or peer review conducted pursuant to K.S.A. 44-510j and amendments thereto shall not be disclosed except to the health care provider and as otherwise specifically provided by the workers compensation act;

(3) records relating to private premises safety inspections;

(4) medical records, forms collected pursuant to subsection (b) of K.S.A. 44-567 and amendments thereto, accident reports maintained under K.S.A. 44-550 and amendments thereto, and social security numbers pertaining to an individual which shall not be disclosed except:

(A) Upon order of a court of competent jurisdiction;

(B) to the employer, its insurance carrier or its representative, from whom a worker seeks workers compensation benefits;

(C) to the division of workers compensation for its own purposes;

(D) to federal or state governmental agencies for purposes of fraud and abuse investigations;

(E) to an employer in connection with any application for employment to an employer, its insurance carrier or representatives providing (i) a conditional offer of employment has been made and (ii) the request for records includes a signed release by the individual, identifies the job conditionally offered by the employer and is submitted in writing, either by mail or electronic means. Requests relating to an individual under this subsection shall be considered a record to be maintained and open to public inspection under K.S.A. 44-550 and amendments thereto, except social security numbers;

(F) to the workers compensation fund for its own purposes; and

(G) to the worker upon written release by the worker.

(b) This section shall be part of and supplemental to the workers compensation act.

44-551. Assistant directors, administrative law judges and special local administrative law judges; application, qualifications, appointment, reappointment, term; workers compensation and employment security boards nominating committee; judge's powers and duties, compensation, fees and expenses; review of findings and awards by workers compensation appeals board; delayed order on board review, effect; payment of medical compensation pending review.

(a) The duties of the assistant directors of workers compensation may include, but not be limited to, acting in the capacity of an administrative law judge.

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

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

(d) Applications for administrative law judge positions shall be submitted to the director of workers compensation. The director shall determine if an applicant meets the qualifications for an administrative law judge as prescribed in subsection (b). Qualified applicants for a position of administrative law judge shall be submitted by the director to the workers compensation and employment security boards nominating committee for consideration.

(e) There is hereby established the workers compensation and employment security boards nominating committee. Whenever the workers compensation administrative law judge nominating and review committee or the workers compensation board nominating committee, or words of like effect, is referred to or designated by a statute, contract or other document, such reference or designation shall be deemed to apply to the workers compensation and employment security boards nominating committee. The workers compensation and employment security boards nominating committee shall be composed of seven members who are appointed by the governor. Each of the following shall select one member to serve on the nominating committee by giving written notice of the selection to the governor who shall appoint such representatives to the committee:

(1) The Kansas secretary of labor;

(2) the Kansas chamber of commerce;

(3) the national federation of independent business;

(4) the Kansas AFL-CIO;

(5) the Kansas state council of the society for human resource management (KS SHRM);

(6) the Kansas self-insurers association; and

(7) the secretary of labor, who shall select a nominee from either an employee organization as defined in K.S.A. 75-4322, and amendments thereto, or a professional employee's organization as defined in K.S.A. 72-5413, and amendments thereto.

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

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

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

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

(1) Workers compensation administrative law judge;

(2) workers compensation appeals board member; and

(3) employment security board of review.

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

(i) When notified of a vacancy in the position of workers compensation administrative law judge or workers compensation appeals board member, the committee shall review all qualified applicants as submitted by the director of workers compensation. The committee shall nominate a qualified person to fill the vacancy and submit that nomination to the secretary of labor. The secretary shall either accept and appoint the person nominated by the nominating committee to the position for which the nomination was made or reject the nomination and request the nominating committee to nominate another person for that position. Upon receipt of any such request for the nomination of another person, the nominating committee shall nominate another person for that position in the same manner as set forth above.

(j)(1) Each administrative law judge shall hold office for a term of four years and may be reappointed. Each administrative law judge shall continue to serve for the term of the appointment or until a successor is appointed. An administrative law judge who wishes to be considered for reappointment shall be deemed to have met the qualification requirements for appointment as administrative law judge. If such administrative law judge wishes to be considered for reappointment by the nominating committee, such administrative law judge shall submit an application as provided in subsection (d) no sooner than 150 days before and no later than 90 days prior to the expiration of such judge's term. Within sixty days prior to the expiration of the term of the administrative law judge seeking reappointment, the nominating committee described above shall meet to vote on reappointment of the administrative law judge. The administrative law judge shall be submitted to the secretary for reappointment unless $^{2}/_{3}$ of the nominating committee votes not to submit the administrative law judge for reappointment.

(2) If a vacancy should occur in the position of an administrative law judge during the term of an administrative law judge, the nominating committee shall nominate an individual from the qualified applicants submitted by the director to complete the remainder of the unexpired portion of the term.

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

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

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

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

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

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

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

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

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

44-552. Record of hearing; certified shorthand reporter; transcript; costs.

(a) The director with the approval of the secretary of labor shall at each hearing under the workers compensation act appoint a certified shorthand reporter, who may be within the classified service of the Kansas civil service act, to attend each hearing where testimony is introduced, and preserve a complete record of all oral or documentary evidence introduced and all proceedings had at such hearing unless such appointment is waived by mutual agreement. At the conclusion of the hearing in any case, if neither party has requested opportunity to file briefs, the administrative law judge may read into the record for certification and filing in the office of the director such stipulations, findings, rulings or orders the administrative law judge deems expedient to the early disposition of the case. If the administrative law judge uses such procedure, with the consent of the parties, no transcript of the record of the hearing shall be made, except that part which is read into the record by the administrative law judge.

(b) All testimony introduced and proceedings had in hearings shall be taken down by the certified shorthand reporter, and if an action for review is commenced or if the director, or either party or the best interests of the administration of justice, so instructs, the certified shorthand reporter shall transcribe the certified shorthand reporter's notes of such hearing. If an action for review is commenced, the cost of preparing a transcript shall be paid as provided by K.S.A. 77-620, and amendments thereto. If no action for review is commenced, the cost of preparing a transcript shall be taxed as costs in the case at the discretion of the director in accordance with fair and customary rates charged in the state of Kansas. All official notes of such certified shorthand reporters shall be preserved and filed in the office of the director. Any transcript prepared as above provided and duly certified shall be received as evidence by the board and by any court with the same effect as if the certified shorthand reporter were present and testified to the records so certified.

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

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

44-553. Witness fees.

Each witness who appears before the director or administrative law judge in response to a subpoena shall receive the same fee and mileage as is provided for witnesses attending district courts in civil cases in this state. The director or the administrative law judge, whoever is conducting the hearing, shall tax and apportion the costs of such witness fees in the discretion of the director or the administrative law judge, as the case may be, and shall make such orders relative to the payment of such fees as the director or the administrative law judge deems expedient in order to secure and provide for the payment of the witness fees.

44-554. Depositions.

The director or the administrative law judge, whoever is conducting the hearing or other proceeding, or any party affected by the hearing or proceedings may cause the depositions of witnesses residing within or without the state to be taken in the manner prescribed by law for like depositions in civil actions in district courts in this state.

44-555. Reporter's fees, assessment.

The director or the administrative law judge, whoever is conducting the hearing or other proceeding is hereby authorized to assess all or a part of the certified shorthand reporter's fees to any party to the proceedings for compensation and shall note the amounts assessed on the findings, award or order.

44-555c. Workers compensation appeals board; jurisdiction; composition and appointment; reappointment; term of office; qualifications, salary and expenses; panels; final orders, content and issuance.

(a) There is hereby established the workers compensation appeals board. Whenever the workers compensation board, or words of like effect, is referred to or designated by a statute, contract or other document, such reference or designation shall be deemed to apply to the workers compensation appeals board. The board shall have exclusive jurisdiction to review all decisions, findings, orders and awards of compensation of administrative law judges under the workers compensation act. The review by the appeals board shall be upon questions of law and fact as presented and shown by a transcript of the evidence and the proceedings as presented, had and introduced before the administrative law judge. The appeals board shall be within the division of workers compensation of the department of labor and all budgeting, personnel, purchasing and related management functions of the board shall be administered under the supervision and direction of the secretary of labor. The appeals board shall consist of five members who shall be appointed by the secretary in accordance with this section and who shall each serve for a term of four years.

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

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

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

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

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

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

(h) If illness or other temporary disability of a member of the board will not permit the member to serve during a case or in any case in which a member of the board must be excused from serving because of a conflict or is otherwise disqualified with regard to such case, the director shall appoint a member pro tem. Each member pro tem shall receive compensation at the same rate as a member of the board receives, prorated for the hours of actual service as a member pro tem and shall receive expenses under the same circumstances and to the same extent as a member of the board receives. Each member pro tem shall have all the powers, duties and functions of a member of the board with regard to the case.

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

(j) For purposes of hearing cases, the board may sit together or in panels of two members or more, designated by the chairperson of the board, except that an appeal from a preliminary award entered under K.S.A. 44-534a, and amendments thereto, may be heard by a panel of one member designated by the chairperson. All members of the board shall determine each matter before the board. All decisions, reviews and determinations by the board shall be approved in writing by at least three board members. Whenever the board enters a final order in any proceeding, the board shall make written findings of fact and conclusions of law forming the basis of the board's determination and final order. The findings of fact and conclusions of law of the board shall be made a part of the final order. The board shall mail a copy of the final order of the board

to all parties to the proceeding within three days following the issuance of the final order.

44-556. Judicial review of actions of the board; procedure; payment of compensation pending administrative and judicial review; application of 1993 amendments; reimbursement or credit for amounts paid under certain circumstances.

(a) Any action of the board pursuant to the workers compensation act, other than the disposition of appeals of preliminary orders or awards under K.S.A. 44-534a and amendments thereto, shall be subject to review in accordance with the Kansas judicial review act by appeal directly to the court of appeals. Any party may appeal from a final order of the board by filing an appeal with the court of appeals within 30 days of the date of the final order. When an appeal has been filed pursuant to this section, an appellee may file a cross appeal within 20 days after the date upon which the appellee was served with notice of the appeal. Such review shall be upon questions of law.

(b) Commencement of an action for review by the court of appeals shall not stay the payment of compensation due for the ten-week period next preceding the board's decision and for the period of time after the board's decision and prior to the decision of the court of appeals on review.

(c) If review is sought on any order entered under the workers compensation act prior to October 1, 1993, such review shall be in accordance with the provisions of K.S.A. 44-551 and this section, and any other applicable procedural provisions of the workers compensation act, as all such provisions existed prior to amendment by this act on July 1, 1993.

(d)(1) If compensation, including medical benefits, temporary total disability benefits or vocational rehabilitation benefits, has been paid to the worker by the employer or the employer's insurance carrier during the pendency of review under this section and the amount of compensation awarded by the board is reduced or totally disallowed by the decision on the appeal or review, the employer and the employer's insurance carrier, except as otherwise provided in this section, shall be reimbursed from the workers compensation fund established in K.S.A. 44-566a and amendments thereto for all amounts of compensation so paid which are in excess of the amount of compensation that the worker is entitled to as determined by the final decision on review. The director shall determine the amount of compensation paid by the employer or insurance carrier which is to be reimbursed under this subsection (d)(1), and the director shall certify to the commissioner of insurance the amount so determined. Upon receipt of such certification, the commissioner of insurance shall cause payment to be made to the employer or the employer's insurance carrier in accordance therewith.

(2) If any temporary or permanent partial disability or temporary or permanent total disability benefits have been paid to the worker by the employer or the employer's insurance carrier during the pendency of review under this section and the amount of compensation awarded for such benefits by the board is reduced by the decision on the appeal or review and the balance of compensation due the worker exceeds the amount of such reduction, the employer and the employer's insurance carrier shall receive a credit which shall be applied as provided in this subsection (d)(2) for all amounts of such benefits which are in excess of the amount of such benefits that the worker is entitled to as determined by the final decision on review or appeal. If a lump-sum amount of compensation is due and owing as a result of the decision of the court of appeals, the credit under this subsection (d)(2) shall be applied first against such lump-sum amount. If there is no such lump-sum amount or if there is any remaining credit after a credit has been applied to a lump-sum amount due and owing, such credit shall be applied against the last compensation payments which are payable for a period of time after the final decision on review or appeal so that the worker continues to receive compensation payments after such final decision until no further compensation is payable after the credit has been satisfied. The credit allowed under this subsection (d)(2) shall not be applied so as to stop or reduce benefit payments after such final decision, but shall be used to reduce the period of time over which benefit payments are payable after such final decision. The provisions of this subsection (d)(2) shall be applicable in all cases under the workers compensation act in which a final award is issued by an administrative law judge on or after July 1, 1990.

(e) If compensation, including medical benefits, temporary total disability benefits or vocational rehabilitation benefits, has been paid to the worker by the employer, the employer's insurance carrier or the workers compensation fund during the pendency of review under this section, and pursuant to K.S.A. 44-534a or K.S.A. 44-551, and amendments thereto, and the employer, the employer's insurance carrier or the workers compensation fund, which was held liable for and ordered to pay all or part of the amount of compensation awarded by the administrative law judge or board, is held not liable by the final decision on review by either the board or an appellate court for the compensation paid or is held liable on such appeal or review to pay an amount of compensation which is less than the amount paid pursuant to the award, then the employer, employer's insurance carrier or workers compensation fund shall be reimbursed by the party or parties which were held liable on such review to pay the amount of compensation to the worker that was erroneously ordered paid. The director shall determine the amount of compensation which is to be reimbursed to each party under this subsection, if any, in accordance with the final decision on the appeal or review and shall certify each such amount to be reimbursed to the party required to pay the amount or amounts of such reimbursement. Upon receipt of such certification, the party required to make the reimbursement shall pay the amount or amounts required to be paid in accordance with such certification. No worker shall be required to make reimbursement under this subsection or subsection (d).

(f) As used in subsections (d) and (e), "employers' insurance carrier" includes any qualified group-funded workers compensation pool under K.S.A. 44-581 through 44-591 and amendments thereto or a group-funded pool under the Kansas municipal group-funded pool act which includes workers

compensation and employers' liability under the workers compensation act.

(g) In any case in which any review is sought under this section and in which the compensability is not an issue to be decided on review, medical compensation shall be payable and shall not be stayed pending such review. The worker may proceed under K.S.A. 44-510k and amendments thereto and may have a hearing in accordance with that statute to enforce the provisions of this subsection.

44-556a. Transfer of appeals due to constitutional defect.

(a) Any workers compensation appeals which have been transferred from the workers compensation board to a district court or the director of workers compensation pursuant to the Kansas Supreme Court's order in *Sedlak v. Dick*, case no. 70,792 (January 13, 1995) and have not been decided by the director or the district courts shall be transferred to the workers compensation board established under K.S.A. 44-555c from the district court or the director on the effective date of this act.

(b) Any workers compensation appeals which have been transferred from the court of appeals to the district courts pursuant to the Kansas Supreme Court's order in *Sedlak v. Dick*, case no. 70,792 (January 13, 1995) and have not been decided by the district courts shall be transferred to the court of appeals on the effective date of this act.

44-557. Employer's duty to report accidents; civil penalty for failure to report; recovery of penalties.

(a) It is hereby made the duty of every employer to make or cause to be made a report to the director of any accident, or claimed or alleged accident, to any employee which occurs in the course of the employee's employment and of which the employer or the employer's supervisor has knowledge, which report shall be made upon a form to be prepared by the director, within 28 days, after the receipt of such knowledge, if the personal injuries which are sustained by such accidents, are sufficient wholly or partially to incapacitate the person injured from labor or service for more than the remainder of the day, shift or turn on which such injuries were sustained.

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

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

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

44-557a. Compilation and publication of statistics; database of information; submission of data; contracts for actuarial or statistical services.

(a) The director shall: (1) Compile and publish statistics to determine the causation of compensable disabilities in the state of Kansas and (2) compile and maintain a database of information on claim characteristics and costs related to closed claims, in order to determine the effectiveness of the workers compensation act to provide adequate indemnity, medical and vocational rehabilitation compensation to injured workers and to return injured workers to remunerative employment. The commissioner of insurance shall cooperate with the director and shall make available any information which will assist the director in compiling such information and statistics and may contract with the director and the secretary of the department of health and environment to collect such information as the director deems necessary. The secretary of revenue shall cooperate with the director and shall disclose individual income taxpayers names, addresses and social security numbers to the director to be used solely for the verification of workers compensation data files. For purposes of this subsection, such disclosure shall not be considered the disclosure of any particulars of a report or return.

(b) In order to further the purpose of subsection (a), each self-insured employer, group-funded workers compensation pool and insurance carrier shall submit to the director the disposition of a statistically significant sample of closed claims under the act. Unless provided by regulations to the contrary, on or after January 1, 2004, any insurer, group-funded workers compensation pool or self-insured employer who voluntarily submits claim information to the director pursuant to release 1 of the international association of industrial accident boards and commission's electronic data interchange implementation guide dated August 9, 1995, and amendments thereto, up to April 4, 2002, shall be deemed to be in compliance.

(c) Each self-insured employer, group-funded workers compensation pool, insurance carrier or health care facility shall submit medical information, by procedure, charge and zip code of the provider, or by hospital charge and related diagnostic and procedure codes in order to set the maximum medical fee schedule.

(d) The director may contract for professional actuarial or statistical services to provide assistance in determining the types of information and the methods of selecting and analyzing information as may be necessary for the director to conduct studies of closed claims under the workers compensation act and to enable the director to make valid statistical conclusions as to the distribution of costs of workers compensation benefits.

(e) The director shall obtain such office and computer

equipment and employ such additional clerical help as the director deems necessary to gather such information and prepare such statistics.

(f) If a self-insured employer, group-funded workers compensation pool or insurance carrier fails to supply the information required by this section, the director shall issue and serve upon such person a summary order or statement of the charges with respect thereto and a hearing shall be conducted thereon in accordance with the provisions of the Kansas administrative procedure act. An administrative penalty of up to $500 for each violation or act, along with an additional penalty of up to $100 for each week thereafter that such report or other information is not provided to the director shall be imposed.

44-559. Insurance against liability; form and contents of policy.

Every policy of insurance against liability under this act shall be in accordance with the provisions of this act and shall be in a form approved by the commissioner of insurance. Such policy shall contain an agreement that the insurer accepts all of the provisions of this act, that the same may be enforced by any person entitled to any rights under this act as well as by the employer, that the insurer shall be a party to all agreements or proceedings under this act, and his appearance may be entered therein and jurisdiction over his person may be obtained as in this act provided, and such covenants shall be enforceable notwithstanding any default of the employer.

44-559a. Workers compensation insurance; deductibles option; occurrence deductible defined; payment of deductible amount by insurer, reimbursement; premium credits; Kansas workers compensation insurance plan not to require deductibles option; group-fund pools may offer deductibles option.

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

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

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

(d) The commissioner of insurance shall not approve any policy form that permits, directly or indirectly, any part of the deductible to be charged to or be passed on to the worker.

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

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

44-561. Reserves.

No insurance carrier shall write any insurance against liability hereunder unless it maintains such reserves as are required by law, or in the absence thereof such reserves as may be required by the commissioner of insurance the power to require and regulate which is hereby vested in said commissioner of insurance.

44-562. Reports to insurance commissioner; inspection.

Every insurance carrier writing insurance for liability hereunder, or the liability of employers rejecting this act, shall report to the commissioner of insurance, in accordance with such rules as he may adopt, such information as he may at any time require for the purpose of determining the solvency of the carrier or the fairness, reasonableness and adequacy of its rates, and for such purposes the commissioner of insurance may inspect the books and records of such carriers and examine its officers, agents and servants under oath.

44-563. Violation of act.

For any violation of the provisions of this act the commissioner of insurance may suspend or revoke the authority of any insurance carrier to do business in this state. If any insurance carrier fails or delays to pay any compensation finally determined to be due, the commissioner of insurance shall hear the complaint, and if such failure is without reasonable excuse he may revoke or suspend the authority of such carrier to do business in this state, and in a proper case may apply for the appointment of a receiver for such carrier.

44-565. Invalidity of part.

If any section, subsection, sentence, clause, or phrase of this act is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this act. The legislature hereby declares that it would have passed the act, each section, subsection, sentence, clause, and phrase thereof irrespective of the fact that any one or more of the same shall be declared unconstitutional.

44-566. Workers compensation fund to facilitate employment of handicapped workers; definitions.

For the purposes of the workmen's compensation act, the following terms are defined as follows:

(a) "Member of the body" means an eye, arm, hand, leg or foot.

(b) "Handicapped employee" means one afflicted with or subject to any physical or mental impairment, or both, whether congenital or due to an injury or disease of such character the impairment constitutes a handicap in obtaining employment or would constitute a handicap in obtaining reemployment if the employee should become unemployed and the handicap is due to any of the following diseases or conditions:

1. Epilepsy;
2. Diabetes;
3. Cardiac disease;
4. Arthritis;
5. Amputated foot, leg, arm or hand;
6. Loss of sight of one or both eyes or a partial loss of vision of more than 75% bilaterally;
7. Residual disability from poliomyelitis;
8. Cerebral palsy;
9. Multiple sclerosis;
10. Parkinson's disease;
11. Cerebral vascular accident;
12. Tuberculosis;
13. Silicosis or asbestosis;
14. Psychoneurotic or mental disease or disorder established by medical opinion or diagnosis;
15. Loss of or partial loss of the use of any member of the body;
16. Any physical deformity or abnormality;
17. Any other physical impairment, disorder or disease, physical or mental, which is established as constituting a handicap in obtaining or in retaining employment.

44-566a. Workers compensation fund; annual assessment; administration; actions against fund, parties, settlement; liabilities of fund; annual report; actuarial review.

(a) There is hereby created in the state treasury the workers compensation fund. The commissioner of insurance shall be responsible for administering the workers compensation fund, and all payments from the workers compensation fund shall be upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the commissioner of insurance or a person or persons designated by the commissioner. The commissioner of insurance annually shall report to the governor and the legislature the receipts and disbursements from the workers compensation fund during the preceding fiscal year.

(b)(1) On June 1 of each year, the commissioner of insurance shall impose an assessment against all insurance carriers, self-insurers and group-funded workers compensation pools insuring the payment of compensation under the workers compensation act, and the same shall be due and payable to the commissioner on the following July 1, the proceeds of which shall be credited to the workers compensation fund. The total amount of each such assessment shall be equal to an amount sufficient, in the opinion of the commissioner of insurance, to pay all amounts, including attorney fees and costs, which may be required to be paid from such fund during the current fiscal year, less the amount of the estimated unencumbered balance in the workers compensation fund as of the June 30 immediately preceding the date the assessment is due and payable under this section. The total amount of each such assessment shall be apportioned among those upon whom it is imposed, such that each is assessed an amount that bears the same relation to such total assessment as the amount of money paid or payable in workers compensation claims by such insurance carrier, self-insurer or group-funded workers compensation pool in the immediately preceding calendar year bears to all such claims paid or payable during such calendar year. The commissioner of insurance may establish experience-based rates of assessments under this subsection and make adjustments in the assessments imposed under this subsection based on the success of accident prevention programs under K.S.A. 44-5,104, and amendments thereto, and other employer safety programs.

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

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

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

(3) In any case in which the workers compensation fund has been impleaded by the employer or insurance carrier and where an award has been entered deciding all of the issues in the employee's claim against the employer, but not deciding the issues between the employer and the fund, the fund may file an application with the administrative law judge requesting that the fund be dismissed from the case with prejudice. The employer shall have a period of six months from the filing of the application in which to complete the employer's evidence on the fund issues and submit the case to the administrative law judge for decision. The fund shall then have a period of 60 days after

the submission of the employer's evidence to submit its own evidence concerning the fund issues in the case. If the employer fails to do so, the administrative law judge shall dismiss the fund from the case with prejudice on the judge's own motion.

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

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

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

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

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

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

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

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

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

(h) The commissioner of insurance shall make an annual report to the legislative coordinating council, senate committee on commerce and house committee on commerce and labor during January of each year. The report shall include recommendations to the legislature on the advisability of continuation or termination of the workers compensation fund or any provisions of the workers compensation act relating thereto, an analysis of the federal Americans with disabilities act and its effect on the workers compensation fund and recommendations on ways to reduce claim and operational costs of the workers compensation fund.

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

44-567. Same; employment or retention of handicapped workers; relief from or apportionment of liability for subsequent injuries; knowledge of impairment; presumptions; commissioner of insurance to be impleaded.

(a) An employer who operates within the provisions of the workers compensation act and who knowingly employs or retains a handicapped employee, as defined in K.S.A. 44-566 and amendments thereto shall be relieved of liability for compensation awarded or be entitled to an apportionment of the costs thereof as follows:

(1) Whenever a handicapped employee is injured or is disabled or dies as a result of an injury which occurs prior to July 1, 1994, and the administrative law judge awards compensation therefor and finds the injury, disability or the death resulting therefrom probably or most likely would not have occurred but for the preexisting physical or mental impairment of the handicapped employee, all compensation and benefits payable because of the injury, disability or death shall be paid from the workers compensation fund; and

(2) subject to the other provisions of the workers compensation act, whenever a handicapped employee is injured or is disabled or dies as a result of an injury and the administrative law judge finds the injury probably or most likely would have been sustained or suffered without regard to the employee's preexisting physical or mental impairment but the resulting disability or death was contributed to by the preexisting impairment, the administrative law judge shall determine in a manner which is equitable and reasonable the amount of disability and proportion of the cost of award which is attributable to the employee's preexisting physical or mental impairment, and the amount so found shall be paid from the workers compensation fund.

(b) In order to be relieved of liability under this section, the employer must prove either the employer had knowledge of the preexisting impairment at the time the employer employed the handicapped employee or the employer retained the handicapped employee in employment after acquiring such knowledge. The employer's knowledge of the preexisting impairment may be established by any evidence sufficient to

maintain the employer's burden of proof with regard thereto. If the employer, prior to the occurrence of a subsequent injury to a handicapped employee, files with the director a notice of the employment or retention of such employee, together with a description of the handicap claimed, such notice and description of handicap shall create a presumption that the employer had knowledge of the preexisting impairment. If the employer files a written notice of an employee's preexisting impairment with the director in a form approved by the director therefor, such notice establishes the existence of a reservation in the mind of the employer when deciding whether to hire or retain the employee.

(c) Knowledge of the employee's preexisting impairment or handicap at the time the employer employs or retains the employee in employment shall be presumed conclusively if the employee, in connection with an application for employment or an employment medical examination or otherwise in connection with obtaining or retaining employment with the employer, knowingly: (1) Misrepresents that such employee does not have such an impairment or handicap; (2) misrepresents that such employee has not had any previous accidents; (3) misrepresents that such employee has not previously been disabled or compensated in damages or otherwise because of any prior accident, injury or disease; (4) misrepresents that such employee has not had any employment terminated or suspended because of any prior accident, injury or disease; (5) misrepresents that such employee does not have any mental, emotional or physical impairment, disability, condition, disease or infirmity; or (6) misrepresents or conceals any facts or information which are reasonably related to the employee's claim for compensation.

(d) An employer shall not be relieved of liability for compensation awarded nor shall an employer be entitled to an apportionment of the costs thereof as provided in this section, unless the employer shall cause the commissioner of insurance, in the capacity of administrator of the workers compensation fund, to be impleaded, as provided in K.S.A. 44-566a and amendments thereto, in any proceedings to determine the compensation to be awarded a handicapped employee who is injured or disabled or has died, by giving written notice of the employee's claim to the commissioner of insurance ten days prior to the first full hearing where any evidence is presented on the claim.

(e) Amendments to this section shall apply only to cases where a handicapped employee, or the employee's dependents, claims compensation as a result of an injury occurring after the effective date of such amendments.

(f) The total amount of compensation due the employee shall be the amount for disability computed as provided in K.S.A. 44-503a, 44-510a through 44-510i and 44-511, and amendments thereto, and in no case shall the payments be less nor more than the amounts provided in K.S.A. 44-510c and amendments thereto.

44-569. Same; awards for subsequent injuries to handicapped workers; apportionment of amounts due; duties of commissioner of insurance; employer's liability when fund insufficient, reimbursement.

(a) In the event that the administrative law judge finds and determines that a worker has become disabled under circumstances set forth in K.S.A. 44-567 and amendments thereto, the administrative law judge shall make an award setting forth the amount due, if any, from the employer by whom the worker was employed when the worker received subsequent injury in the manner and form by which the award shall be paid, and shall in addition thereto make an award setting forth the amount due to the employee to be paid from the workers compensation fund. All awards paid out of the workers compensation fund shall be payable in payments, the number and size of which shall be set forth by the administrative law judge in the award. The administrative law judge at the option of the administrative law judge is authorized to approve lump-sum settlements with and lump-sum payments from the workers compensation fund.

(b) The director, within 30 days from the date of the filing of the award, shall deliver to the commissioner of insurance a certified copy of the award and thereafter the commissioner of insurance shall cause payment to be made from the workers compensation fund to the employee in harmony with the award.

(c) Whenever the commissioner of insurance finds that there are insufficient funds in the workers compensation fund to satisfy an award of compensation made to a worker from such fund, the commissioner of insurance shall give notice of this finding to the employer by whom the worker was employed when the worker sustained subsequent injury. Upon receiving such notice, the employer shall assume and become liable for the payment of compensation as provided in such award and until such time that the commissioner of insurance finds that there are sufficient funds in the workers compensation fund for this purpose. The employer shall be reimbursed from the workers compensation fund for all such payments of compensation which would have been paid from the workers compensation fund. The commissioner of insurance shall determine the amount of compensation paid by the employer which is to be reimbursed under this subsection, and the amount so determined shall be paid to the employer from the workers compensation fund.

(d) The director shall submit in the regular written report of the director the number and amount of cases involving the workers compensation fund.

44-569a. Same; employer or insurance carrier reimbursed from fund, when.

Whenever in any proceedings on a claim for compensation the workers compensation fund is a party respondent and the employer or insurance carrier has either voluntarily or by order of the administrative law judge, paid disability compensation or furnished medical treatment for the injured worker, or both, such employer or insurance carrier shall be entitled to reimbursement from the workers compensation fund of such compensation or medical treatment, or both, to the extent the fund shall be determined to be liable for such disability compensation or medical treatment, or both. The employer or insurance carrier also shall be entitled to reimbursement from the workers compensation fund as provided in K.S.A. 44-534a,

and amendments thereto, subsection (d) of K.S.A. 44-556 and amendments thereto and subsection (c) of K.S.A. 44-569 and amendments thereto.

44-570. Same; employer's liability for no-dependent deaths; awards to fund; duties of commissioner of insurance; refund.

(a) In the event that subsection (d) of K.S.A. 44-510b, and amendments thereto, is inapplicable, every employer in the state of Kansas operating a trade or business under the provisions of the workers compensation act shall pay within 30 days after the award is made the sum of $18,500 to the commissioner of insurance in every case where death results from the accident and where there are no dependents who are entitled to compensation under the workers compensation act.

(b) The commissioner of insurance shall remit all moneys received under this section to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of the workers' compensation fund.

(c) Upon rendering an award under this section, the director shall transmit immediately a certified copy thereof to the commissioner of insurance. In case payment is, or has been made, under the provisions of this section and dependency later is shown, or if payment is made by mistake or inadvertence, or under such circumstances that justice requires a refund thereof, the commissioner of insurance is hereby authorized to refund such payment to the employer, or if insured, to the employer's insurance carrier.

44-572. Same; review; modification or cancellation of awards.

Any award made under the provisions of this act shall be subject to review, modification or cancellation as provided by K.S.A. 44-528.

44-573. Rules and regulations; filing.

The director of workers compensation may adopt and promulgate such rules and regulations as the director deems necessary for the purposes of administering and enforcing the provisions of the workers compensation act. The commissioner of insurance may adopt and promulgate such rules and regulations as the commissioner of insurance deems necessary for the purposes of administering the workers compensation fund and group-funded workers compensation pools. All such rules and regulations shall be filed in the office of the secretary of state as provided by article 4 of chapter 77 of the Kansas Statutes Annotated and amendments thereto.

44-574. Construing and citing workers compensation laws; severability.

(a) The provisions of K.S.A. 44-501 through 44-592, 44-596, 44-5,101 through 44-5,104, 44-5,110 through 44-5,116 and 44-5,120 through 44-5,125 and amendments thereto and 44-5a01 through 44-5a22, and any acts amendatory thereof or supplemental thereto, shall be construed together and shall be known and may be cited as the workers compensation act. Any reference in any of the statutes of this state to any of the statutes referred to by this section shall be deemed to be a reference to the workers compensation act. Whenever the workmen's compensation act, or words of like effect, is referred to or designated by statute, contract or other document, such reference or designation shall be deemed to apply to the workers compensation act.

(b) If any provision or clause of this act or application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable.

44-575. State workers compensation self-insurance fund; state agencies self-insured as single employer; administration; state workplace health and safety program.

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

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

(c) The state workers compensation self-insurance fund shall be liable to pay: (1) All compensation for claims arising on and after July 1, 1974, and all other amounts required to be paid by any state agency as a self-insured employer under the workers compensation act and any amendments or additions thereto; (2) the amount that all state agencies are liable to pay of the "carrier's share of expense" of the administration of the office of the director of worker's compensation as provided in K.S.A. 74-712 through 74-719, and amendments thereto, for each fiscal year; (3) all compensation for claims remaining from the self-insurance program which existed prior to July 1, 1974, for institutional employees of the division of mental health and retardation services of the department of social and rehabilitation services; (4) the cost of administering the state workers compensation self-insurance fund including the defense of such fund and any costs assessed to such fund in any proceeding to which it is a party; and (5) the cost of establishing and operating the state workplace health and safety program under subsection (f). For the purposes of K.S.A. 44-575 through

44-580, and amendments thereto, all state agencies are hereby deemed to be a single employer whose liabilities specified in this section are hereby imposed solely upon the state workers compensation self-insurance fund and such employer is hereby declared to be a fully authorized and qualified self-insurer under K.S.A. 44-532, and amendments thereto, but such employer shall not be required to make any reports thereunder.

(d) The secretary of health and environment shall administer the state workers compensation self-insurance fund and all payments from such fund shall be upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the secretary of health and environment or a person or persons designated by the secretary. The director of accounts and reports may issue warrants pursuant to vouchers approved by the secretary for payments from the state workers compensation self-insurance fund notwithstanding the fact that claims for such payments were not submitted or processed for payment from money appropriated for the fiscal year in which the state workers compensation self-insurance fund first became liable to make such payments.

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

insurance fund.

(f) There is hereby established the state workplace health and safety program within the state workers compensation self-insurance program of the department of health and environment. The secretary of health and environment shall implement and the division of industrial health and safety of the Kansas department of labor shall assist in administering the state workplace health and safety program for state agencies. The state workplace health and safety program shall include, but not be limited to:

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

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

(3) procedures for identifying and controlling workplace hazards;

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

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

44-576. State workers compensation self-insurance fund; self-insurance assessment against state agencies; rate.

(a) For each payroll period, each state agency shall certify with each payroll, the amount of each self-insurance assessment for such state agency, not in conflict with appropriations therefor. The director of accounts and reports shall transfer the amount of each self-insurance assessment for such state agency to the credit of the state workers compensation self-insurance fund.

(b) Each July 1, the secretary of administration shall determine a self-insurance assessment rate for each state agency based upon the accidental injury and occupational disease experience of the state agency and the liability of the state workers compensation self-insurance fund as provided in subsection (c) of K.S.A. 44-575, and amendments thereto. Such rate shall be expressed as a percentage. The secretary of administration shall utilize actuarial and other professional assistance in determining self-insurance assessment rates under this section. On or before each July 30, the secretary of administration shall notify each state agency of such agency's projected self-insurance assessment rate for the next fiscal year and such agency's actual self-insurance assessment rate for the current fiscal year.

(c) The amount of the self-insurance assessment for each state agency shall be determined by multiplying the total payroll for each payroll period of such state agency by such agency's self-insurance rate assessment for the fiscal year. For purposes of this section, total payroll shall not include any payments made by the state board of regents pursuant to the provisions of subsection (5) of K.S.A. 74-4927a, and amendments thereto, to a member of the faculty or other person defined in subsection (1)(a) of K.S.A. 74-4925, and amendments thereto.

44-577. Same; claims for compensation by state employees; service of claims; defense of fund; regional emergency medical response team.

(a) All claims for compensation under the workers compensation act against any state agency for claims arising on and after July 1, 1974, and claims for compensation remaining from the self-insurance program which existed prior to July 1, 1974, for institutional employees of the division of mental health and retardation services of the department of social and rehabilitation services shall be made against the state workers compensation self-insurance fund. Such claims shall be served upon the secretary of health and environment in the secretary's capacity as administrator of the state workers compensation self-insurance fund in the manner provided for claims against other employers under the workers compensation act. The chief attorney for the department of health and environment, or another attorney of the department of health and environment designated by the chief attorney, shall represent and defend the state workers compensation self-insurance fund in all proceedings under the workers compensation act.

(b) The secretary of health and environment shall investigate, or cause to be investigated, each claim for compensation against the state workers compensation self-insurance fund. For the purposes of such investigations, the secretary of health and environment is authorized to obtain expert medical advice regarding the injuries, occupational diseases and disabilities involved in such claims. If, based upon such investigation and any other available information, the secretary of health and environment finds that there is no material dispute as to any issue involved in the claim, that the claim is valid and that the claim should be settled by agreement,

the secretary of health and environment may proceed to enter into such an agreement with the claimant, for the state workers compensation self-insurance fund. Any such agreement may provide for lump-sum settlements subject to approval by the director and all such agreements shall be filed in the office of the director for approval as provided in K.S.A. 44-527, and amendments thereto. All other claims for compensation against such fund shall be paid in accordance with the workers compensation act pursuant to final awards or orders of an administrative law judge or the board or pursuant to orders and findings of the director under the workers compensation act.

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

44-578. Same; administrative rules and regulations.

The secretary of health and environment may adopt rules and regulations necessary for the administration of the state workers compensation self-insurance fund, including the processing and settling of claims for compensation made against such fund. 44-

44-579. Same; copies of accident reports to secretary of administration.

From and after July 1, 1974, whenever any report is required to be made to the workmen's compensation director by any state agency as an employer pursuant to the provisions of K.S.A. 44-557, or any amendments thereto, such state agency shall make such report to the workmen's compensation director and shall send a copy thereof to the secretary of administration.

44-580. Same; construction of 44-575 to 44-580.

The provisions of K.S.A. 44-575 to 44-580, inclusive, shall be construed as supplemental to and as a part of the workmen's compensation act.

44-581. Group-funded workers compensation pools; requirements.

(a) Five or more employers, regardless of domicile, who are members of the same bona fide trade, merchant or professional association, regardless of domicile, which has been in existence for not less than five years and who are engaged in the same, similar or closely related type of business may enter into agreements to pool their liabilities for Kansas workers compensation benefits and employers' liability.

(b) Five or more employers, regardless of domicile, who are members of the same bona fide trade, merchant or professional association, regardless of domicile, which has been in existence for not less than five years and who are engaged in dissimilar types of businesses for which the commissioner of insurance finds an accurate prediction of loss can be made, may enter into agreements to pool their liabilities for Kansas workers compensation benefits and employers' liability.

(c) All such arrangements shall be known as group-funded workers compensation pools, which shall not be deemed to be insurance or insurance companies and shall not be subject to the provisions of chapter 40 of the Kansas Statutes Annotated, except as otherwise provided herein.

(d) For purposes of this section:

(1) "Same, similar or closely related type of business" means, but is not limited to, a business in which the principal payroll is in a manual classification or combination of classifications representing occupations which contribute to an essential part of the end product or service which is the primary business interest of the membership of the bona fide trade, merchant or professional association; and

(2) "principal payroll" means not less than 51% of the total payroll for the preceding policy year or, in the case of an employer who has no preceding full-year's payroll, not less than 51% of estimated annual payroll; principal payroll or estimated annual payroll shall not include the annual payroll of those employees set forth in the standard exceptions contained in the rules promulgated by the national council on compensation insurance.

44-582. Same; certificate of authority; application; commissioner's review of surplus funds.

(a) Application for a certificate of authority to operate a group-funded workers compensation pool shall be made to the commissioner of insurance not less than 60 days prior to the proposed inception date of the pool. The application shall include the following:

(1) A copy of the bylaws of the proposed pool, a copy of the articles of incorporation, if any, and a copy of all agreements and rules of the proposed pool. If any of the bylaws, articles of incorporation, agreements or rules are changed, the pool shall notify the commissioner within 30 days after such change.

(2) A copy of the trust agreement securing the payment of workers compensation benefits. If the trust agreement is changed, the pool shall notify the commissioner within 30 days after such change.

(3) Designation of the initial board of trustees and administrator. When there is a change in the membership of the board of trustees or change of administrator, the pool shall notify the commissioner within 30 days after such change.

(4) The address where the books and records of the pool will be maintained at all times. If this address is changed, the pool shall notify the commissioner within 30 days after such change.

(5) An individual application for each initial member of the pool. Each individual application shall include a current certified financial statement on a form approved by the commissioner.

(6) A current certified financial statement on a form approved by the commissioner showing that (1) the combined net worth of all members applying for coverage on the inception date of the pool is in an amount not less than $1,000,000 in the case of a pool meeting the requirements of subsection (a) of K.S.A. 44-581 and amendments thereto, or (2) the combined net worth of all members applying for coverage on the inception date of the pool is in an amount of $1,250,000 in the case of a pool meeting the requirements of subsection (b) of K.S.A. 44-581 and amendments thereto.

(7) A current certified financial statement on a form approved by the commissioner showing the financial ability of the pool to meet its obligations under the workers compensation act.

(8) Evidence that the annual Kansas gross premium of the pool will be (A) not less than $250,000 in the case of a pool meeting the requirements of subsection (a) of K.S.A. 44-581 and amendments thereto, or (B) not less than $500,000 in the case of a pool meeting the requirements of subsection (b) of K.S.A. 44-581 and amendments thereto. The annual Kansas gross premium shall be based upon the authorized rates as filed by the national council of compensation insurance.

(9) An indemnity agreement jointly and severally binding the group and each member thereof to comply with the provisions of the workmen's compensation act. The indemnity agreement shall be in a form acceptable to the commissioner.

(10)(A) Proof of payment by each member of a pool, which meets the requirements of subsection (a) of K.S.A. 44-581 and amendments thereto, of not less than 25% of the estimated annual premium into a designated depository; and

(B) proof of payment by each member of a pool, which meets the requirements of subsection (b) of K.S.A. 44-581 and amendments thereto, of not less than 35% of the estimated annual premium into a designated depository.

(11) A copy of the procedures adopted by the pool to provide services with respect to underwriting matters and safety engineering.

(12) A copy of the procedures adopted by the pool to provide claims adjusting and reporting of loss data.

(13) A confirmation of specific and aggregate excess insurance, or in lieu of the aggregate excess insurance required herein, adequate surplus funds as approved by the commissioner, except that, in the case of a pool authorized under subsection (b) of K.S.A. 44-581 and amendments thereto, such pool shall maintain an aggregate excess policy with a limit of not less than $2,000,000 which attaches at no more than 125% of standard premium.

(14) Any other relevant factors the commissioner may deem necessary.

(b) The commissioner may require an independent actuarial review of claims reserves as part of the commissioner's review of surplus funds.

(c) For the purposes of this section:

(1) "Surplus funds" means retained earnings of the pool after reserves have been established for all known and incurred, but not reported, losses of the pool after all other liabilities of the pool, including unearned premium reserves, have been deducted from total assets.

(2) "Adequate surplus funds" means the amount necessary for the pool to fund its self-insured obligations.

44-583. Same; irrevocable consent; service of process on commissioner of insurance.

Every group-funded workers' compensation pool applying for authority to operate a pool in this state, as a condition precedent to obtaining such authority, shall file in the insurance department a written irrevocable consent, that any action may be commenced against such pool in the proper court of any county in this state in which the cause of action shall arise or in which the plaintiff may reside by the service of process on the commissioner of insurance of this state, and stipulating and agreeing that such service shall be taken and held in all courts to be as valid and binding as if due service had been made upon the trustees or the administrator of such pool. The consent shall be executed by the board of trustees and shall be accompanied by a duly certified copy of the resolution passed by the trustees to execute such consent.

44-584. Same; certificate of authority, renewal, suspension, revocation; examinations.

(a) The application for a new certificate shall be signed by the trustees of the trust fund created by the pool. Any application for a renewal of an existing certificate shall meet at least the standards established in subsections (a)(6) through (a)(14) of K.S.A. 44-582, and amendments thereto. After evaluating the application the commissioner shall notify the applicant that the plan submitted is approved or conversely, if the plan submitted is inadequate, the commissioner shall then fully explain to the applicant what additional requirements must be met. If the application is denied, the applicant shall have 15 days to make an application for hearing by the commissioner after service of the denial notice. The hearing shall be conducted in accordance with the provisions of the Kansas administrative procedure act.

(b) An approved certificate of authority shall remain in full force and effect until such certificate is suspended or revoked by the commissioner. An existing pool operating under an approved certificate of authority must file with the commissioner, within 120 days following the close of the pool's fiscal year, a current financial statement on a form approved by the commissioner showing the financial ability of the pool to meet its obligations under the worker compensation act and confirmation of specific and aggregate excess insurance as required by law for the pool. If an existing pool's certificate of authority is suspended or revoked, such pool shall have the same rights to a hearing by the commissioner as for applicants for new certificates of authority as set forth in subsection (a) above.

(c) Whenever the commissioner shall deem it necessary the commissioner may make, or direct to be made, an examination of the affairs and financial condition of any pool in accordance with K.S.A. 40-222 and 40-223, and amendments thereto, except that once every five years the commissioner shall conduct an examination of the affairs and financial condition of each pool. Each pool shall submit a certified independent audited financial statement no later than 150 days after the end of the pool's fiscal year. The financial statement shall include outstanding reserves for claims and for claims incurred but not reported. Each pool shall file payroll records, accident experience and compensation reports and such other reports and statements at such times and in such manner as the commissioner shall require. Whenever it appears to the commissioner from such examination or other satisfactory evidence that the solvency of any such pool is impaired, or that it is doing business in violation of any of the laws of this state, or that its affairs are in an unsound condition so as to endanger its ability to pay or cause to be paid the compensation in the amount, manner and time due as provided for in the Kansas workers compensation act, the commissioner shall, before filing such report or making the same public, grant such pool upon reasonable notice a hearing in accordance with the provisions of the Kansas administrative procedure act, and, if on such hearing the report be confirmed, the commissioner shall suspend the certificate of authority for such pool until its solvency shall have been fully restored and the laws of the state fully complied with. The commissioner may, if there is an unreasonable delay in restoring the solvency of such pool and in complying with the law, revoke the certificate of authority of such pool to do business in this state. Upon revoking any such certificate the commissioner shall communicate the fact to the attorney general, whose duty it shall be to commence and prosecute an action in the proper court to dissolve such pool or to enjoin the same from doing or transacting business in this state. The commissioner of insurance may call a hearing under K.S.A. 40-222b, and amendments thereto, and the provisions shall apply to group workers compensation pools.

44-585. Same; premiums; contributions; deposit of premiums; refunds.

(a) Premium contributions to the pool shall be based upon appropriate manual classification and rates, plus or minus applicable experience credits or debits, and minus any advance discount approved by the trustees, not to exceed 15% of manual premium. The pool must use rules, classifications and rates as promulgated by an approved rating organization and must report premium and loss data to a rating organization. Such rates shall be the prospective loss costs, as authorized in K.S.A. 40-955, and amendments thereto, plus expenses necessary to administer the pool. For purposes of subsection (b) the prospective loss costs shall be presumed to be the 70% required to be deposited in the claims fund. If the pool has been

in operation for more than five years, the board of trustees may determine such rates as approved by the commissioner.

(b) At least 70% of the annual premium shall be placed into a designated depository for the sole purpose of paying claims. If so approved by the commissioner of insurance, the annual premium to be designated to such depository may be determined to be the net amount of premium after all or a portion of the specific and aggregate excess insurance premium costs have been paid. This shall be called the claims fund account. The remaining annual premium shall be placed into a designated depository for the payment of taxes, fees and administrative costs. This shall be called the administrative fund account. If a pool has been in operation for more than five years, the commissioner may authorize allocation of a different amount to the claims fund account, if solvency of the pool would not be endangered.

(c) At the end of a fund year or any time thereafter, the trustees may declare a refund of any surplus moneys for the fund year in excess of the amount necessary to fulfill all obligations under the workers compensation act for that fund year. Such refund shall not be distributed, in whole or in part, less than 12 months after the end of the fund year for which the refund was declared. After receipt from the pool of the notice of declared refund and satisfactory evidence that sufficient funds remain on deposit for the payment of all outstanding claims and expenses, including incurred but not reported claims, the commissioner shall approve distribution of the declared refund. Any such refund shall be paid only to those employers who remained participants in the pool for an entire year. Payment of previously earned refunds shall not be contingent on continued membership in the pool.

44-586. Same; premiums; use; investments.

The trustees shall not utilize any of the moneys collected as premiums for any purpose unrelated to Kansas workers' compensation. Moneys not needed for current obligations may be invested by the trustees. Unless authorized elsewhere in this act, all funds of a pool shall be invested only in securities or other investments permitted by article 2a of chapter 40 of the Kansas Statutes Annotated, or such other securities or investments as the commissioner may permit.

44-587. Same; group-funded workers' compensation pools fee fund; expense of administration; assessments.

The expense of the administration of the group-funded workers' compensation pools shall be financed in the following manner:

(a) There is hereby created in the state treasury a fund to be called the group-funded workers' compensation pools fee fund. All amounts which are required to be paid from the group compensation pools fee fund for the operating expenditures incident to the administration of the group-funded workers' compensation pools shall be paid from the group-funded workers' compensation pools fee fund. The commissioner of insurance shall be responsible for administering the group-funded workers' compensation pools fee fund and all payments from the fund shall be upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the commissioner of insurance or a person or persons designated by the commissioner.

(b) The commissioner of insurance shall estimate as soon as practical after January 1 of each year the expenses necessary for the administration of the group-funded workers' compensation pools for the fiscal year beginning on July 1 thereafter. Not later than June 1 of each year, the commissioner of insurance shall notify all such group-funded workers' compensation pools of the amount of each assessment imposed under this subsection on such group-funded workers' compensation pools and the same shall be due and payable to the commissioner on the July 1 following.

(c) The commissioner of insurance shall remit all moneys received by or for such commissioner under this section to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of the group-funded workers' compensation pools fee fund.

44-588. Same; premium tax; payment.

In addition to the fees required to be paid in K.S.A. 44-587, and amendments thereto, and as a condition precedent to the continuation of the certificate of authority provided in this act, all group-funded workers' compensation funds shall pay no later than 90 days after the end of each fiscal year a tax upon the annual Kansas gross premium collected by the pool at the rate of 1% per annum applied to the collective premium relating to all Kansas members of the pool for the preceding fiscal year. In the computation of the tax, all pools shall be entitled to deduct any annual Kansas gross premiums returned on account of cancellation or dividends returned to members of such pools or expenditures used for the purchase of specific and aggregate excess insurance, as provided in subsection (a) of K.S.A. 44-582, and amendments thereto.

44-589. Same; assessments; subject to article 24 of chapter 40 of Kansas Statutes Annotated.

(a) Each licensed pool shall be assessed annually as provided by K.S.A. 74-713, K.S.A. 44-566a, and amendments thereto, and K.S.A. 44-588.

(b) Each licensed pool shall be subject to the provisions of article 24 of chapter 40 of the Kansas Statutes Annotated.

44-590. Same; new members; application; termination.

(a) After the inception date of the group-funded workers' compensation pool, prospective new members of the pool shall submit an application for membership to the board of trustees or its administrator. The trustees may approve the application for membership pursuant to the bylaws of the pool. The application for membership and approval shall then be filed with the commissioner. Membership takes effect after approval.

(b) Individual members may elect to terminate their participation in a pool or be subject to cancellation by the pool pursuant to the bylaws of the pool. On termination or cancellation of a member, the pool shall notify the commissioner within 10 days and shall maintain coverage of

each cancelled or terminating member for 30 days after notice to the commissioner or until the commissioner gives notice that the cancelled or terminating member has procured workers' compensation and employer's liability insurance, whichever occurs first.

44-591. Same; board of trustees; duties.

To ensure the financial stability of the operations of each group-funded workers compensation pool, the board of trustees of each pool is responsible for all operations of the pool. The board of trustees shall consist of not less than three nor more than 11 persons selected according to the bylaws of the pool for stated terms of office to direct the administration of a pool, and whose duties include approving applications by new members of the pool. The majority of the trustees must be members of the pool, but a trustee may not be an owner, officer or employee of any service agent or representative. All trustees must be residents of this state or officers of corporations authorized to do business in this state. The board of trustees of each fund shall take all necessary precautions to safeguard the assets of the fund, including all of the following:

(a) Designate an administrator to administer the financial affairs of the pool who shall furnish a fidelity bond to the pool in an amount sufficient to protect the pool against the misappropriation or misuse of any moneys or securities. The commissioner shall determine the amount of the bond and the administrator shall file evidence of the bond with the commissioner. The bond is one of the conditions required for approval of the establishment and continued operation of a pool.

(b) Retain control of all moneys collected or disbursed from the pool and segregate all moneys into a claims fund account and an administrative fund account. The amount allocated to the claims fund account shall be sufficient to cover payment of any aggregate loss fund as defined in the aggregate excess policy. Only disbursements that are credited toward the aggregate loss fund are made from the claims fund account. All administrative costs and other disbursements are made from the administrative fund account. The administrator of the pool shall establish a revolving fund for use by the authorized service agent which is replenished from time to time from the claims fund account. The service agent and its employees shall be covered by a fidelity bond, with the pool as obligee, in an amount sufficient to protect all moneys placed in the revolving fund.

(c) Audit the accounts and records of the pool annually or at any time as required. The commissioner may prescribe the type of audits and a uniform accounting system for use by pool and service agents to determine the solvency of the pool.

(d) The trustees shall not extend credit to individual members for payment of a premium.

(e) The board of trustees shall not borrow any moneys from the pool or in the name of the pool without advising the commissioner of the nature and purpose of the loan and obtaining approval from the commissioner.

(f) The board of trustees may delegate authority for specific functions to the administrator of the pool. The functions which the board may delegate include such matters as contracting with a service agent, determining the premium chargeable to and refunds payable to members, investing surplus moneys and approving applications for membership. The board of trustees shall specifically define all authority it delegates in the written minutes of the trustees' meetings. Any delegation of authority is not effective without a formal resolution passed by the trustees.

44-592. Same; licensing of persons soliciting workers compensation insurance.

Any person soliciting the business of workers compensation insurance for a group-funded workers compensation pool must be licensed as provided in K.S.A. 40-240 through 40-243, and amendments thereto, except that no such person shall be required to satisfy the certification requirements regarding insurance companies providing reinsurance, secondary insurance, or excess coverage.

44-593. Reorganization of pool agreement under 12-2216 et seq.

Any municipalities, as defined by K.S.A. 75-6102, and amendments thereto, who have entered into an agreement to pool their liabilities for Kansas workers compensation benefits and employers' liability under the provisions of K.S.A. 44-581 et seq., and amendments thereto, prior to January 1, 1987, may seek to reorganize the pooling agreement under K.S.A. 12-2616 et seq., and amendments thereto. All assets, liabilities and the fund balance of each group-funded workers compensation pool shall be transferred to the pool seeking a certificate of authority under K.S.A. 12-2616 et seq., and amendments thereto, upon authorization by the commissioner of insurance.

44-594. Same; confidentiality of certain financial information.

(a) All records filed with or maintained by the insurance commissioner under K.S.A. 44-581 through 44-593 and amendments thereto which relate to financial information submitted by an employer to qualify as a member of a group-funded workers compensation pool, or to maintain membership in a pool, or which relate to financial information about any member of a pool that is submitted by or on behalf of a pool, shall be confidential records and shall not be open to the public or disclosed except as otherwise specifically provided by the workers compensation act.

(b) This section shall be a part of and supplemental to the workers compensation act.

44-5,101. Informational and educational materials; contents; language; distribution to insured and self-insured.

(a) In order to provide Kansas employers and employees full and fair information about the rights and responsibilities of employers and employees under the workers compensation act, the director of workers compensation and the commissioner of insurance are hereby authorized and directed to prescribe the format and content of educational and informational materials to be distributed in accordance with the provisions of this act. The educational and informational materials shall be available in both English and Spanish language versions and shall include, but not necessarily be limited to, brief descriptions or statements about the following topics in nontechnical language:

(1) Basic purpose of the workers compensation law;

(2) employer responsibilities;

(3) employee responsibilities;

(4) general components of workers compensation benefits;

(5) determination and administration of workers compensation benefits;

(6) workers compensation insurance rating procedures, including available methods of appeal; and

(7) accident prevention and workplace safety.

(b) No policy or contract of workers compensation insurance, no self-insurance permit, and no renewal of any such policy, contract or permit shall be issued or delivered to an employer of this state unless a copy of the materials prescribed pursuant to subsection (a) accompanies the policy, contract, permit or renewal certificate.

44-5,102. Same; distribution upon notice of injury; preparation and dissemination.

(a) Immediately on receiving notice of injury to or death of an employee, the employer shall mail or deliver to the employee or legal beneficiary a clear and concise description of:

(1) The benefits available under the workers compensation act;

(2) the process to be followed in making a claim for benefits;

(3) the identification of the person, firm or organization directly responsible for responding to and processing a claim for workers compensation benefits;

(4) the responsibilities of the self-insured employer, insurance company or group-funded self-insurance plan;

(5) the assistance available from the office of the director of workers compensation; and

(6) the address and a toll-free telephone number that will facilitate access to the assistance available from the director's office.

(b) The director of workers compensation shall prepare the information required by subsection (a) within 180 days after the effective date of this act and shall provide a copy of such information to the commissioner of insurance. The information shall be made available in both English and Spanish language versions. The director of workers compensation shall reproduce or arrange for the reproduction and distribution of such information in sufficient quantities and in both English and Spanish language versions, when requested, to continuously accommodate the needs of self-insured employers under the workers compensation act in order to comply with this section and shall provide such information to such self-insured employers.

(c) The commissioner of insurance shall distribute a copy of such information to each insurance company authorized to transact workers compensation insurance in this state and each group-funded self-insurance plan. Each such insurance company and group-funded self-insurance plan shall reproduce or arrange for the reproduction and distribution of such information in sufficient quantities and in both English and Spanish language versions, when requested, to continuously accommodate the needs of their respective insured employers and members in order to comply with this section and shall provide such information to such insured employers and members therefor.

44-5,103. Same; cooperation by and duties of self-insurers and insurance companies and other benefit delivery entities; continuing education activities.

Insurers, self-insurers, insurance agents' associations, licensed rating organizations, health care provider associations, vocational rehabilitation facilities, and other groups or associations involved in the administration, performance or payment of benefits or services associated with workers compensation claims, benefits or requirements shall:

(a) Cooperate with the commissioner of insurance and the director of workers compensation in the preparation and presentation of seminars, audio-visual materials and other instructional information designed to promote workplace safety, improve employer and employee relationships, generally enhance confidence in the integrity of the workers compensation system, and reduce the cost of workers compensation while providing a stable means of equitably compensating persons injured in the course of performing the duties of their employment; and

(b) encourage and assist in the development of specialized continuing education for persons who are health care providers or the staff of vocational rehabilitation facilities that will acquaint such persons with their role and the impact of their decisions regarding impairment ratings, medical improvement potential, return to work evaluations, permanent restrictions and other aspects of the workers compensation system influenced or determined by such providers in addition to the care rendered.

44-5,104. Accident prevention programs; requirements and reports; inspections; duties of secretary of labor; failure to maintain, penalties.

(a) Each insurance company or group-funded self-insurance plan providing workers compensation insurance coverage in Kansas shall maintain and shall provide accident prevention programs upon request of the covered employer as a prerequisite for authority to provide such insurance or coverage. The accident prevention programs shall be adequate to furnish accident prevention services required by the nature of the operations of the policyholders or other covered entities

and the accident prevention services shall include surveys, recommendations, training programs, consultations, analyses of accident causes, industrial hygiene and industrial health services to implement the program of accident prevention services. The accident prevention programs shall be staffed with field safety representatives. Each field safety representative shall be a person who is (1) a college graduate who has a bachelor's degree in science, industrial hygiene, safety or loss control, or engineering, (2) a registered professional engineer, (3) a certified safety professional, who has attained the designation from the board of certified safety professionals, (4) a certified industrial hygienist, who has attained the designation from the American board of industrial hygiene (5) an individual with five years of experience in occupational safety and health, (6) a person who is working under direct supervision of a person who meets the qualification requirements of this section (7) a person who has attained the designation of associate in loss control management or associate in risk management from the insurance institute of America, who has attained the designation of occupational safety and health technologist from the board of certified safety professionals, or who has attained any other comparable designation or certification by a recognized organization as determined by the secretary of labor, or (8) an individual who has completed a certified training program in accident prevention services approved by the secretary of labor. The insurance company or group-funded self-insurance plan may employ qualified personnel, retain qualified independent contractors, contract with the policyholder to provide qualified accident prevention personnel and services, or use a combination of such methods to fulfill the obligations imposed by this section. Accident prevention personnel shall have the qualifications required for field safety representatives.

(b) The secretary of labor may conduct such inspections as the secretary deems necessary to determine the adequacy of the accident prevention services required by subsection (a) for each insurance company and group-funded self-insurance plan providing workers compensation insurance coverage in Kansas, including, but not limited to, random inspections and those based upon employer complaints. Documented employer complaints shall be appropriately investigated and the results shall be reported to the commissioner of insurance. The secretary shall not be required by this section to inspect each insurance company or group-funded self-insurance plan.

(c) A notice that accident prevention services are available to the policyholder from the insurance company shall appear in no less than ten-point boldface type on the front page of each workers compensation insurance policy delivered or issued for delivery in this state.

(d) At least once each year, each insurance company or group-funded self-insurance plan providing workers compensation insurance in Kansas shall submit to the director of workers compensation detailed information on the type of accident prevention programs offered to the policyholders by the insurance company or to the covered entities by the group-funded self-insurance plan, as the case may be. The information shall include:

(1) The amount of money spent by the insurance company or group-funded self-insured plan on accident prevention services;

(2) the names, number and qualifications of field safety representatives employed;

(3) the number of site inspections performed;

(4) any accident prevention services made available under a contractual arrangement;

(5) a specification and listing of the premium size of the risks to which accident prevention services were actually provided;

(6) evidence of the effectiveness of and accomplishments in accident prevention; and

(7) any additional information required by the director of workers compensation.

(e) If the insurance company or group-funded self-insurance plan does not maintain or provide the accident prevention services required by this section, the director of workers compensation shall notify the commissioner of insurance. Upon receiving such notification, the commissioner of insurance shall presume the insurance company or group-funded self-insurance plan knew or reasonably should have known of the violation and shall assess the penalty prescribed therefore pursuant to K.S.A. 40-2,125 and amendments thereto. The secretary shall send the information and results obtained pursuant to subsection (d) to the insurance commissioner who shall widely disseminate information about the program.

(f) The secretary of labor shall employ the personnel necessary to enforce the provisions of this section and shall employ sufficient safety inspectors to perform inspections at job sites or other work places and may audit accident prevention programs of each insurance company or group-funded self-insurance plan which is subject to this section to determine the adequacy of the accident prevention services provided. The safety inspectors shall have the qualifications required for field safety representatives by subsection (a).

(g) The insurance company or group-funded self-insurance plan, and any agent, servant, or employee thereof, shall have no liability with respect to any accident based on the allegation that such accident was caused or could have been prevented by a program, inspection or other activity or by a service undertaken or not undertaken by the insurance company or group-funded self-insurance plan for the prevention of accidents in connection with operations of the employer. This immunity shall not affect the liability of the insurance company or group-funded self-insurance plan for compensation or as otherwise provided in this act.

44-5,110. Ombudsman program; qualifications and appointment of ombudsmen; special ombudsmen, contracts; dissemination of program information.

(a) The director of workers compensation shall establish an ombudsman program within the division of workers compensation to assist injured employees and persons claiming death benefits in obtaining benefits under the workers compensation act. The director shall employ qualified persons as ombudsmen for the program.

(b) Each ombudsman shall meet with or otherwise provide information to injured employees, shall investigate complaints and shall communicate with employers, insurance carriers and health care providers. An ombudsman may assist claimants in mediation conferences and otherwise assist unrepresented claimants, employers and other parties to protect the rights of such parties under the workers compensation act.

(c) In cases of emergency, on a case-by-case basis, the director may enter into contracts with trained mediators or other qualified persons to perform services under the ombudsman program as special ombudsmen. Each special ombudsman shall receive a fee commensurate with the services rendered in accordance with the contracts for services. The fee for a special ombudsman shall be taxed as costs in the claim to which the special ombudsman is assigned against the respondent.

(d) The director of workers compensation shall widely disseminate information about the ombudsman program.

44-5,117. Mediation conferences.

(a) Upon the request of any party to a workers compensation claim and the acceptance of the other party, the director of workers compensation shall schedule the parties for a mediation conference. The purpose of the mediation shall be to assist the parties in reaching agreement on any disputed issues in a workers compensation claim. If the director is advised that one party does not wish to participate in the mediation, the director is authorized to encourage that party to participate.

(b) Mediation conferences shall be conducted by mediators appointed by the director. Such mediators shall be qualified as mediators pursuant to the dispute resolution act, K.S.A. 5-501 *et seq*., and amendments thereto, and any relevant rules of the Kansas supreme court as authorized pursuant to K.S.A. 5-510, and amendments thereto.

(c) Persons with final settlement authority for each party shall be present, in person or by video conference, at the mediation conference.

(d) All mediation conferences shall be conducted by a mediator in accordance with the dispute resolution act, K.S.A. 5-501, and amendments thereto.

(e) The director shall widely disseminate information about the mediation conference procedure.

44-5,120. Fraudulent or abusive acts or practices; defined; powers, duties and functions of director of workers compensation and commissioner of insurance; application of section; administrative investigation and enforcement; hearings; costs; cease and desist orders; civil penalties; repayments, interest; review referrals, immunity.

(a) The director of workers compensation is hereby authorized and directed to establish a system for monitoring, reporting and investigating suspected fraud or abuse by any persons who are not licensed or regulated by the commissioner of insurance in connection with securing the liability of an employer under the workers compensation act or in connection with claims or benefits thereunder. The commissioner of insurance is hereby authorized and directed to establish a system for monitoring, reporting and investigating suspected fraud or abuse by any persons who are licensed or regulated by the commissioner of insurance in connection with securing the liability of an employer under the workers compensation act or in connection with claims thereunder.

(b) This section applies to:

(1) Persons claiming benefits under the workers compensation act;

(2) employers subject to the requirements of the workers compensation act;

(3) insurance companies including group-funded self-insurance plans covering Kansas employers and employees;

(4) any person, corporation, business, health care facility that is organized either for profit or not-for-profit and that renders medical care, treatment or services in accordance with the provisions of the workers compensation act to an injured employee who is covered thereunder; and

(5) attorneys and other representatives of employers, employees, insurers or other entities that are subject to the workers compensation act.

(c) The commissioner of insurance may examine the workers compensation records of insurance companies or self-insurers as necessary to ensure compliance with the workers compensation act. Each insurance company providing workers compensation insurance in Kansas, the company's agents, and those entities that the company has contracted to provide review services or to monitor services and practices under the workers compensation act shall cooperate with the commissioner of insurance, and shall make available to the commissioner any records or other necessary information requested by the commissioner. The commissioner of insurance shall conduct an examination authorized by this subsection in accordance with the provisions of K.S.A. 40-222 and 40-223 and amendments thereto.

(d) Fraudulent or abusive acts or practices for purposes of the workers compensation act include, willfully, knowingly or intentionally:

(1) Collecting from an employee, through a deduction from wages or a subsequent fee, any premium or other fee paid by the employer to obtain workers compensation insurance coverage;

(2) misrepresenting to an insurance company or the insurance department, the classification of employees of an employer, or the location, number of employees, or true identity of the employer with the intent to lessen or reduce the premium otherwise chargeable for workers compensation insurance coverage;

(3) lending money to the claimant during the pendency of the workers compensation claim by an attorney representing the claimant, but this provision shall not prohibit the attorney from assisting the claimant in obtaining financial assistance from another source, except that (A) the attorney shall not have a financial interest, directly or indirectly, in the source from which the loan or other financial assistance is secured and (B) the attorney shall not be personally liable in any way for the credit extended to the claimant;

(4) obtaining, denying or attempting to obtain or deny payments of workers compensation benefits for any person by:

(A) Making a false or misleading statement;

(B) misrepresenting or concealing a material fact;

(C) fabricating, altering, concealing or destroying a document; or

(D) conspiring to commit an act specified by clauses (A), (B) or (C) of this subsection (d)(4);

(5) bringing, prosecuting or defending an action for compensation under the workers compensation act or requesting initiation of an administrative violation proceeding that, in either case, has no basis in fact or is not warranted by existing law or a good faith argument for the extension, modification or reversal of existing law;

(6) breaching a provision of an agreement approved by the director;

(7) withholding amounts not authorized by the director from the employee's or legal beneficiary's weekly compensation payment or from advances from any such payment;

(8) entering into a settlement or agreement without the knowledge and consent of the employee or legal beneficiary;

(9) taking a fee or withholding expenses in excess of the amounts authorized by the director;

(10) refusing or failing to make prompt delivery to the employee or legal beneficiary of funds belonging to the employee or legal beneficiary as a result of a settlement, agreement, order or award;

(11) misrepresenting the provisions of the workers compensation act to an employee, an employer, a health care provider or a legal beneficiary;

(12) instructing employers not to file required documents with the director;

(13) instructing or encouraging employers to violate the employee's right to medical benefits under the workers compensation act;

(14) failing to tender promptly full death benefits if a clear and legitimate dispute does not exist as to the liability of the insurance company, self-insured employer or group-funded self-insurance plan;

(15) failing to confirm medical compensation benefits coverage to any person or facility providing medical treatment to a claimant if a clear and legitimate dispute does not exist as to the liability of the insurance carrier, self-insured employer or group-funded self-insurance plan;

(16) failing to initiate or reinstate compensation when due if a clear and legitimate dispute does not exist as to the liability of the insurance company, self-insured employer or group-funded self-insurance plan;

(17) misrepresenting the reason for not paying compensation or terminating or reducing the payment of compensation;

(18) refusing to pay compensation as and when the compensation is due;

(19) refusing to pay any order awarding compensation;

(20) refusing to timely file required reports or records under the workers compensation act, except as provided in K.S.A. 44-557 and amendments thereto; and

(21) for a health care provider to submit a charge for health care that was not furnished.

(e) Whenever the director or the commissioner of insurance has reason to believe that any person has engaged or is engaging in any fraudulent or abusive act or practice in connection with the conduct of Kansas workers compensation insurance, claims, benefits or services in this state, that such fraudulent or abusive act or practice is not subject to possible proceedings under K.S.A. 40-2401 through 40-2421 and amendments thereto by the commissioner of insurance, and that a proceeding by the director or the commissioner of insurance, in the case of any person licensed or regulated by the commissioner, with respect thereto would be in the interest of the public, the director or the commissioner of insurance, in the case of any person licensed or regulated by the commissioner, shall issue and serve upon such person a summary order or statement of the charges with respect thereto and shall conduct a hearing thereon in accordance with the provisions of the Kansas administrative procedure act. Complaints filed with the director or the commissioner of insurance may be dismissed by the director or the commissioner of insurance on their own initiative, and shall be dismissed upon the written request of the complainant, if the director or commissioner of insurance has not conducted a hearing or taken other administrative action dismissing the complaint within 180 days of the filing of the complaint. Any such dismissal of a complaint in accordance with this section shall constitute final action by the director or commissioner of insurance which shall be deemed to exhaust all administrative remedies under K.S.A. 44-5,120 and amendments thereto for the purpose of allowing subsequent filing of the matter in court by the complainant. Dismissal of a complaint in accordance with this section shall not be subject to appeal or judicial review.

(f) If, after such hearing, the director or the commissioner of insurance, in the case of any person licensed or regulated by the commissioner, determines that the person charged has engaged in any fraudulent or abusive act or practice, any costs incurred as a result of conducting any administrative hearing authorized under the provisions of this section may be assessed against the person or persons found to have engaged in such acts. In an appropriate case to reimburse costs incurred, such costs may be awarded to a complainant. As used in this subsection, "costs" include witness fees, mileage allowances, any costs associated with reproduction of documents which become a part of the hearing record and the expense of making a record of the hearing.

(g) If, after such hearing, the director or the commissioner of insurance, in the case of any person licensed or regulated by the commissioner, determines that the person or persons charged have engaged in a fraudulent or abusive act or practice the director or the commissioner of insurance, in the case of any person licensed or regulated by the commissioner, shall issue an order or summary order requiring such person to cease and desist from engaging in such act or practice and, in the exercise of discretion, may order any one or more of the following:

(1) Payment of a monetary penalty of not more than $2,000 for each and every act constituting the fraudulent or

abusive act or practice, but not exceeding an aggregate penalty of $20,000 in a one-year period;

(2) redress of the injury by requiring the refund of any premiums paid by and requiring the payment of any moneys withheld from, any employee, employer, insurance company or other person or entity adversely affected by the act constituting a fraudulent or abusive act or practice;

(3) repayment of an amount equal to the total amount that the person received as benefits or any other payment under the workers compensation act and any amount that the person otherwise benefited as a result of an act constituting a fraudulent or abusive act or practice, with interest thereon determined so that such total amount, plus any accrued interest thereon, bears interest, from the date of the payment of benefits or other such payment or the date the person was benefited, at the current rate of interest prescribed by law for judgments under subsection (e)(1) of K.S.A. 16-204 and amendments thereto per month or fraction of a month until repayment.

(h) After the expiration of the time allowed for filing a petition for review of an order issued under this section, if no such petition has been duly filed within such time, the director at any time, after notice and opportunity for hearing in accordance with the provisions of the Kansas administrative procedure act, may reopen and alter, modify or set aside, in whole or in part, any order issued under this section, whenever in the director's opinion conditions of fact or of law have so changed as to require such action or if the public interest so requires.

(i) Upon the order of the director or the commissioner of insurance, in the case of any person licensed or regulated by the commissioner, after notice and hearing in accordance with the provisions of the Kansas administrative procedure act, any person who violates a cease and desist order of the director or the commissioner of insurance, in the case of any person licensed or regulated by the commissioner, issued under this section may be subject, at the discretion of the director or the commissioner of insurance, in the case of any person licensed or regulated by the commissioner, to a monetary penalty of not more than $10,000 for each and every act or violation, but not exceeding an aggregate penalty of $50,000 for any six-month period in addition to any penalty imposed pursuant to subsection (g).

(j) Any civil fine imposed under this section shall be subject to review in accordance with the Kansas judicial review act in the district court in Shawnee county.

(k) All moneys received under this section for costs assessed, which are not awarded to a complainant, or monetary penalties imposed shall be deposited in the state treasury and credited to the workers compensation fee fund.

(l) Any person who refers a possibly fraudulent or abusive practice to any state or governmental investigative agency, shall be immune from civil or criminal liability arising from the supply or release of such referral as long as such referral is made in good faith with the belief that a fraudulent or abusive practice has, is or will occur and said referral is not made by the person or persons who are in violation of the workers compensation act in order to avoid criminal prosecution or administrative hearings.

44-5,121. Same; cause of action to recover economic losses.

(a) Any person who has suffered economic loss by a fraudulent or abusive act or practice shall have a cause of action against any other person to recover such loss which was paid as benefits or other amounts of money which were paid under the workers compensation act and to seek relief for other monetary damages from such other person based on a fraudulent or abusive act or practice, except that such other monetary damages shall not include damages for nonpecuniary loss. Relief under this section is to be predicated upon exhaustion of administrative remedies available in K.S.A. 44-1,520 and amendments thereto.

(b) Nothing in this section or K.S.A. 44-5,120 and amendments thereto shall prohibit an employer from exercising a right to reimbursement under K.S.A. 44-534a, 44-556 or 44-569a and amendments thereto.

44-5,122. Same; acts or practices constituting crimes, procedure; reporting alleged violations; review and investigation.

(a) If the director or the assistant attorney general assigned to the division of workers compensation has probable cause to believe a fraudulent or abusive act or practice or any other violation of the workers compensation act is of such significance as to constitute a crime, a copy of any order, all investigative reports and any evidence in the possession of the division of workers compensation which relates to such act, practice or violation may be forwarded to the prosecuting attorney of the county in which the act or any of the acts were performed which constitute the fraudulent or abusive act or practice or other violation. Any case which a county attorney fails to prosecute within 90 days shall be returned promptly to the director. The assistant attorney general assigned to the division of workers compensation shall then prosecute the case if, in the opinion of the assistant attorney general, the acts or practices involved still warrant prosecution.

(b) Any person who believes a violation of the workers compensation act has been or is being committed may notify the division of workers compensation of the department of labor immediately after discovery of the alleged violation. The person shall send to the division of workers compensation, in a manner prescribed by the director, the information describing the facts of the alleged violation and such additional information relating to the alleged violation as the director may require. The director shall cause an evaluation of the facts surrounding the alleged violation to be made to determine the extent, if any, to which violations of the workers compensation act exist, which shall include a review and investigation by the assistant attorney general assigned to the division to the extent as may be deemed necessary to determine whether there has been a violation of the workers compensation act.

44-5,123. Same; immunity from civil liability for reporting information in good faith.

No person shall be subject to civil liability by virtue of (a)

the filing of reports or furnishing of other information, in good faith and without malice, required by K.S.A. 44-5,120 through 44-5,122 and amendments thereto or required by the director as a result of the authority conferred upon the director by law or (b) notifying the division of workers compensation of any alleged violation of the workers compensation act or providing information in the course of an investigation of an alleged violation of the workers compensation act where such person's actions were in good faith and without malice.

44-5,124. Assistant attorney general; appointment within division of workers compensation; duties.

The attorney general shall appoint, with the approval of the secretary of labor, an assistant attorney general who shall be within the division of workers compensation of the department of labor and who shall receive an annual salary fixed by the attorney general with the approval of the secretary of labor and the governor. The operating expenditures for the assistant attorney general shall be financed by funds available for the administration of the workers compensation act. The duties of the assistant attorney general shall include directing or assisting in the investigation and administrative prosecution of alleged fraudulent or abusive acts or practices or other violations of K.S.A. 44-5,120 through 44-5,122, and amendments thereto, or of any other provisions of the workers compensation act, and in the investigation and criminal prosecution of any such acts, practices or violations which constitute crimes.

44-5,125. Workers compensation fraud and other acts or practices constituting crimes; penalties; repayment of certain amounts, interest; cause of action, certain monetary damages.

(a)(1) Any person who obtains or attempts to obtain workers compensation benefits for such person or another, or who denies or attempts to deny the obligation to make any payment of workers compensation benefits by knowingly or intentionally: (A) Making a false or misleading statement, (B) misrepresenting or concealing a material fact, (C) fabricating, altering, concealing or destroying a document; (D) receiving temporary total disability benefits or permanent total disability benefits to which they are not entitled, while employed, or (E) conspiring with another person to commit any act described by paragraph (1) of this subsection (a), shall be guilty of:

(i) A class A nonperson misdemeanor, if the amount received as a benefit or other payment under the workers compensation act as a result of such act or the amount that the person otherwise benefited monetarily as a result of a violation of this subsection (a) is $1,000 or less;

(ii) a severity level 9, nonperson felony, if such amount is more than $1,000 but less than $25,000;

(iii) a severity level 7, nonperson felony, if the amount is more than $25,000, but less than $50,000;

(iv) a severity level 6, nonperson felony if the amount is more than $50,000, but less than $100,000; or

(v) a severity level 5, nonperson felony if the amount is more than $100,000.

(b) Any person who knowingly and intentionally presents a false certificate of insurance that purports that the presenter is insured under the workers compensation act, shall be guilty of a level 8, nonperson felony.

(c) A health care provider under the workers compensation act who knowingly and intentionally submits a charge for health care that was not furnished, shall be guilty of a level 9, nonperson felony.

(d) Any person who obtains or attempts to obtain a more favorable workers compensation insurance premium rate than that to which the person is entitled, who prevents, reduces, avoids or attempts to prevent, reduce or avoid the payment of any compensation under the workers compensation act, or who fails to communicate a settlement offer or similar information to a claimant under the workers compensation act, by, in any such case knowingly or intentionally: (1) Making a false or misleading statement; (2) misrepresenting or concealing a material fact; (3) fabricating, concealing or destroying a document; or (4) conspiring with another person or persons to commit the acts described in clause (1), (2) or (3) of this subsection shall be guilty of a level 9, nonperson felony.

(e) Any person who has received any amount of money as a benefit or other payment under the workers compensation act as a result of a violation of subsection (a) or (c) and any person who has otherwise benefited monetarily as a result of a violation of subsection (a) or (c) shall be liable to repay an amount equal to the amount so received by such person or the amount by which such person has benefited monetarily, with interest thereon. Any such amount, plus any accrued interest thereon, shall bear interest at the current rate of interest prescribed by law for judgments under subsection (e)(1) of K.S.A. 16-204, and amendments thereto per month or fraction of a month until repayment of such amount, plus any accrued interest thereon. The interest shall accrue from the date of overpayment or erroneous payment of any such amount or the date such person benefited monetarily.

(f) Any person aggrieved by a violation of subsection (a), (b), (c) or (d) shall have a cause of action against any other person to recover any amounts of money erroneously paid as benefits or any other amounts of money paid under the workers compensation act, and to seek relief for other monetary damages, for which liability has accrued under this section against such other person. Relief under this subsection is to be predicated upon exhaustion of administrative remedies available in K.S.A. 44-5,120, and amendments thereto.

(g) Nothing in this section shall prohibit an employer from exercising a right to reimbursement under K.S.A. 44-534a, 44-556 or 44-569a, and amendments thereto.

(h) Prosecution for any crime under this section shall be commenced within five years subject to the time period set forth in subsection (8) of K.S.A. 21-3106, prior to its repeal, or subsection (e) of K.S.A. 2011 Supp. 21-5107, and amendments thereto.

44-5,126. Severability.

(a) If any provisions of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this act which

can be given effect without the invalid provision or application, and to this end the provisions of this act are severable.

(b) This section shall be part of and supplemental to the workers compensation act.

44-5,127. Affidavit of exempt status; fraud; penalties.

(a) Any person who is not required to be covered under a workers compensation insurance policy or other plan for the payment of workers compensation may execute an affidavit of exempt status under the workers compensation act. The affidavit shall be a form prescribed by the commissioner of insurance. The affidavit shall be available on the web site of the department of insurance.

(b) Execution of the affidavit shall establish a rebuttable presumption that the executor is not an employee for purposes of the workers compensation act and that an individual or company possessing the affidavit is in compliance and therefore shall not be responsible for workers compensation claims made by the executor.

(c) The execution of an affidavit shall not affect the rights or coverage of any employee of the individual executing the affidavit.

(d)(1) Knowingly providing false information on a notarized affidavit of exempt status under the workers compensation act shall constitute a misdemeanor punishable by a fine not to exceed $1,000.

(2) Affidavits shall conspicuously state on the front thereof in at least 10 point, boldfaced print that it is a crime to falsify information on the form.

(3) The commissioner of insurance shall immediately notify the fraud unit in the department of insurance of any violations or suspected violations of this section. The commissioner of insurance shall cooperate with the fraud unit.

(e) The commissioner of insurance shall have the power to adopt all reasonable rules and regulations necessary to implement this section.

44-5a01. Occupational diseases; treated as injuries by accident under workmen's compensation act; defined; limitations of liability; aggravations.

(a) Where the employer and employee or workman are subject by law or election to the provisions of the workmen's compensation act, the disablement or death of an employee or workman resulting from an occupational disease as defined in this section shall be treated as the happening of an injury by accident, and the employee or workman or, in case of death, his dependents shall be entitled to compensation for such disablement or death resulting from an occupational disease, in accordance with the provisions of the workmen's compensation act as in cases of injuries by accident which are compensable thereunder, except as specifically provided otherwise for occupational diseases. In no circumstances shall an occupational disease be construed to include injuries caused by repetitive trauma as defined in K.S.A. 44-508, and amendments thereto.

(b) "Occupational disease" shall mean only a disease arising out of and in the course of the employment resulting from the nature of the employment in which the employee was engaged under such employer, and which was actually contracted while so engaged. "Nature of the employment" shall mean, for purposes of this section, that to the occupation, trade or employment in which the employee was engaged, there is attached a particular and peculiar hazard of such disease which distinguishes the employment from other occupations and employments, and which creates a hazard of such disease which is in excess of the hazard of such disease in general. The disease must appear to have had its origin in a special risk of such disease connected with the particular type of employment and to have resulted from that source as a reasonable consequence of the risk. Ordinary diseases of life and conditions to which the general public is or may be exposed to outside of the particular employment, and hazards of diseases and conditions attending employment in general, shall not be compensable as occupational diseases, except that compensation shall not be payable for pulmonary emphysema or other types of emphysema unless it is proved, by clear and convincing medical evidence to a reasonable probability, that such emphysema was caused, solely and independently of all other causes, by the employment with the employer against whom the claim is made, except that, if it is proved to a reasonable medical probability that an existing emphysema was aggravated and contributed to by the employment with the employer against whom the claim is made, compensation shall be payable for the resulting condition of the workman, but only to the extent such condition was so contributed to and aggravated by the employment.

(c) In no case shall an employer be liable for compensation under this section unless disablement results within one year or death results within three years in case of silicosis, or one year in case of any other occupational disease, after the last injurious exposure to the hazard of such disease in such employment, or, in case of death, unless death follows continuous disability from such disease, commencing within the period above limited, for which compensation has been paid or awarded or timely claim made as provided in the workmen's compensation act, and results within seven years after such last exposure. Where payments have been made on account of any disablement from which death shall thereafter result such payments shall be deducted from the amount of liability provided by law in case of death. The time limit prescribed by this section shall not apply in the case of an employee whose disablement or death is due to occupational exposure to ionizing radiation.

(d) Where an occupational disease is aggravated by any disease or infirmity, not itself compensable, or where disability or death from any other cause, not itself compensable, is aggravated, prolonged, accelerated or in any wise contributed to by an occupational disease, the compensation payable shall be reduced and limited to such proportion only of the compensation that would be payable if the occupational disease were the sole cause of the disability or death, as such occupational disease, as a causative factor, bears to all the causes of such disability or death, such reduction in compensation to be effected by reducing the number of weekly or monthly payments or the amounts of such payments, as under the circumstances of the particular case may be for the best interest of the claimant or claimants.

(e) No compensation for death from an occupational disease shall be payable to any person whose relationship to the deceased employee or workman arose subsequent to the beginning of the first compensable disability save only to afterborn children.

(f) The provisions of K.S.A. 44-570, and amendments thereto, shall apply in case of an occupational disease.

44-5a03. Fraudulent representation.

No compensation shall be payable for an occupational disease if the employee, at the time of entering into the employment of the employer by whom the compensation would otherwise be payable, fraudulently represents himself in writing as not having previously been disabled, laid off, or compensated in damages or otherwise, because of such disease.

44-5a04. Disablement and disability defined; cancellation of award, when.

(a) Except as otherwise provided in this act "disablement" means the event of an employee becoming actually incapacitated, partially or totally, because of an occupational disease, from performing the employee's work in the last occupation in which injuriously exposed to the hazards of such disease, and "disability" means the state of being so incapacitated.

(b) The administrative law judge may cancel the award and end the compensation if the administrative law judge finds that the employee:

(1) Has returned to work for the same employer in whose employ the employee was disabled or for another employer and is capable of earning the same or higher wages than the employee did at the time of the disablement, or is capable of gaining an income from any trade or employment which is equal to or greater than the wages the employee was earning at the time of the disablement;

(2) is absent and continues to be absent so that a reasonable examination cannot be made of the employee by a health care provider selected by the employer; or

(3) has departed beyond the boundaries of the United States.

44-5a05. Workman or dependents not entitled to compensation, when.

A workman or his dependents shall not be entitled to compensation hereunder if it is proved that the disablement to the workman results from his deliberate intention to cause such disability, or from his willful failure to use a guard or protection against disablement required pursuant to any statute and provided for him, or a reasonable and proper guard and protection voluntarily furnished him by said employer, or solely from his intoxication.

44-5a06. Date from which compensation is computed; employer liable.

The date when an employee or workman becomes incapacitated by an occupational disease from performing his work in the last occupation in which he was injuriously exposed to the hazards of such disease, shall be taken as the date of the injury equivalent to the date of accident under the workmen's compensation act. Where compensation is payable for an occupational disease, the employer in whose employment the employee or workman was last injuriously exposed to the hazards of such disease, and the insurance carrier, if any, on the risk when such employee was last so exposed under such employer, shall be liable therefor, without the right to contribution from any prior employer or insurance carrier; the amount of the compensation shall be based upon the average wages of the employee or workman when last so exposed under such employer, and the notice of disability and claim for compensation, as hereinafter required, shall be given and made to such employer: Provided, That in case of silicosis the only employer and insurance carrier liable shall be the last employer in whose employment the employee or workman was last injuriously exposed to the hazards of the disease during a period of sixty (60) days or more, and the insurance carrier, if any, on the risk when the employee or workman was last so exposed under such employer.

44-5a07. Securing payment of compensation; liability exclusive.

An employer subject to the provisions of this act shall secure the payment of compensation in accordance with the provisions of this act in any method prescribed by the provisions of section 44-532 of the workmen's compensation law, and such insurance or other security may be separate and distinct from the insurance or other security under the workmen's compensation law. Where the foregoing requirement is complied with the liability of the employer under this act shall be exclusive and in place of any and all other civil liability whatsoever, at common law or otherwise.

44-5a08. Rights of employer subrogated to insurance carrier.

When the obligation of the employer, under this act, is secured by insurance, the insurance carrier shall be subrogated to all the rights and privileges of the employer under the provisions of this act and of the workmen's compensation law so far as applicable.

44-5a09. Silicosis defined.

Wherever used in this act, "silicosis" shall mean the characteristic fibrotic condition of the lungs caused by the inhalation of silica dust.

44-5a10. Disability or death from silicosis; compensation rights.

In the absence of conclusive evidence in favor of the claim, disability or death from silicosis shall be presumed not to be due to the nature of any occupation within the provisions of this act, unless during the ten (10) years immediately preceding the date of disablement the employee or workman has been exposed to the inhalation of silica dust over a period of not less than five (5) years, two (2) years of which shall have been in this state: *Provided, however,* That if the employee or workman shall have been employed by the same employer during the whole of such five-year period, his right to compensation against such employer shall not be affected by the fact that he had been employed during any part of such period outside of this state.

44-5a13. Compensation for death from silicosis complicated with other disease; how paid.

In case of disability or death from silicosis complicated with any other disease or from any other disease complicated with silicosis, the compensation payable under the workmen's compensation act shall be reduced as provided in subsection (d) of K.S.A. 44-5a01, as amended.

44-5a15. Waiver by employee affected with disease although not disabled; effect.

Where an employee, though not actually disabled, is found to be affected by any occupational disease such employee may, subject to the approval of the director of workers' compensation be permitted to waive in writing full compensation for any aggravation of such condition that may result from continuing in the hazardous occupation. In the event of total disablement or death as a result of the disease with which the employee or worker was so affected, after such a waiver, compensation shall nevertheless be payable as herein elsewhere provided, but in no case, whether for disability or death or both, for longer than one hundred (100) weeks. A waiver so permitted shall remain effective, for the trade, occupation, process or employment for which executed notwithstanding a change or changes of employer. The director of workers' compensation shall make reasonable rules and regulations relative to the form, execution, filing, or registration and public inspection of waivers or records thereof.

44-5a16. Dermatitis; disability after receiving compensation; effect.

A person who has suffered disability from dermatitis and has received compensation therefor shall not be entitled to compensation for disability from a later attack of dermatitis due to substantially the same cause, unless, immediately preceding

the date of the later disablement, he has been engaged in the occupation to which the recurrence of the disease is ascribed and under the same employer for at least sixty (60) days.

44-5a17. Notice of disease and filing of claim; deemed waived, when.

Written notice of an occupational disease shall be given to the employer by the employee or workman or someone on his behalf within ninety (90) days after disablement therefrom, and in the case of death from such an occupational disease, written notice of such death shall also be given to the employer within ninety (90) days thereafter. Failure to give either of such notices shall be deemed waived unless objection is made at a hearing on the claim prior to any award or decision thereon. Actual knowledge of such disablement, by the employer in whose employment the employee or workman was last injuriously exposed, or by the responsible superintendent or foreman in charge of the work, shall be deemed notice within the meaning of this section. If no claim for disability or death from an occupational disease be filed with the workmen's compensation director or served on the employer within one (1) year from the date of disablement or death, as the case may be, the right to compensation for such disease shall be forever barred: *Provided, however,* That the failure to file or serve a claim within the time limited herein shall be deemed waived unless objection to such failure be made at a hearing on such claim before any award or decision thereon.

Notice or claim shall be deemed waived in case of disability or death where the employer or insurance carrier makes compensation payments therefor, or, within the time above limited, the employer or his insurance carrier by his or its conduct leads the employee or workman or claimant reasonably to believe that notice or claim has been waived.

The time limit prescribed by this section shall not apply in the case of an employee whose disablement or death is or was caused by latent or delayed pathological conditions, changes or malignancies due to the occupational exposure to X-rays, radium, radioactive substances or machines, or ionizing radiation: *Provided, however,* That no claims shall be allowed unless a claim has been filed within one year after the date upon which the employee first suffered incapacity from the exposure to radiation and either knew or in the exercise of reasonable diligence should have known that the occupational disease was caused by his present or prior employment.

44-5a18. Autopsy; notice; findings; public record.

Upon the filing or service of a claim for compensation for death from an occupational disease where an autopsy is necessary to accurately and scientifically ascertain and determine the cause of death, such autopsy shall be ordered by the director. Such autopsy shall be made under the supervision of a medical examiner appointed by the director. The medical examiner shall be a health care provider who is a specialist in such examinations. The medical examiner shall perform or attend such autopsy and shall certify the medical examiner's findings in a report of the autopsy. The report of autopsy shall be filed with the director and shall be a public record. The employer and claimants shall be given reasonable notice of such autopsy and each shall have the right to have a health care provider of the employer or claimant's own choosing present at the time. The director also may exercise such authority on the director's own motion or on application made to the director at any time, upon the presentation of facts showing that a controversy may exist in regard to the cause of death or the existence of any occupational disease.

44-5a19. Award or denial of award reviewed, when.

An award or denial of award of or agreement for compensation for an occupational disease may be reviewed and compensation increased, reduced or terminated where previously awarded, or awarded where previously denied, only upon proof of fraud or under undue influence or of change in conditions, and then only upon application by a party in interest made not later than one (1) year after the denial of award, or where compensation has been awarded or agreed to be paid, after the award or the date when the last payment was made under the award or agreement, except in case of silicosis where such time limit shall be two (2) years.

44-5a20. Act inapplicable, when.

This act shall not apply to cases of occupational disease in which the last injurious exposure to the hazards of such disease occurred before this act shall have taken effect.

44-5a21. Rules and regulations.

The director of workers' compensation shall adopt such rules and regulations as necessary to carry out the intent and purposes of this act.

44-5a22. Act supplemental to workmen's compensation law.

This act shall be construed as supplementary to and as part of the workmen's compensation act of this state.

74-711. Availability of records maintained for administration of employment security law; order requiring employers to file statement of insurance, qualify as self-insurers or members of group-funded workers' compensation pools; failure to comply; injunction; procedure.

The records of the secretary of labor, compiled and maintained for administration of the employment security law, shall be made available to the director of workers' compensation for comparison with respect to matters of payroll, payroll tax, number and type of employees of all employers doing business in the state of Kansas who have not qualified as self-insurers or group-funded workers' compensation pools and who have not filed statements of insurance with the director of workers' compensation. The director shall order employers coming under this act and who have not qualified as self-insurers or group-funded workers' compensation pools and who have not filed a statement of insurance as provided by this act to so qualify or to file such statement or to cease doing business in the state of Kansas within a period to be set by the director but not less than 10 days from the date of the order.

In the event that such an employer fails to comply with the order of the director of workers' compensation issued as provided in this section, the attorney general or the district attorney or county attorney of any county in which such employer is doing business shall prepare and file in the district court of any county in which such employer is doing business a petition in the name of the state signed and verified by the director of workers' compensation, and asking that such employer be enjoined from doing business in this state for such period of time as the director may deem proper and until such employer has complied with the workers' compensation law, and the district court shall have jurisdiction and venue to enter its order without requiring bond or evidence to be filed or presented. In all other respects such action shall be governed by the laws governing civil procedure.

74-712. Worker's compensation law, expense of administration; estimate; determination by legislature; proration among insurance carriers, self-insurers and group-funded workers' compensation pools; duties of director.

The expense of the administration of the workers' compensation law shall be financed in the following manner:

(a) The director of workers' compensation shall estimate as soon as practicable after January 1 of each year the expenses necessary for the administration of the workers' compensation law for the fiscal year beginning on July 1 thereafter. Such estimate shall be provided to the legislature, and the legislature shall determine the amount of administrative expense to be obtained under the provisions of this act from workers' compensation insurance carriers, self-insurers and group-funded workers' compensation pools and the amount of such expense to be obtained from other sources; such carriers' and self-insurers' and group-funded workers' compensation pools' share of such expense shall be called "carrier's share of expense";

(b) the carrier's share of expense, as determined in subparagraph (a) hereof, shall be prorated among the insurance carriers writing workers' compensation insurance in the state, self-insurers and group-funded workers' compensation pools.

The director shall determine the total amount of benefit payments made pursuant to the workmen's compensation act, paid out as a result of injuries received in the state of Kansas for the immediately preceding calendar year, and the director's determination shall be conclusive. The director shall list the amount of workers' compensation benefits paid as a result of injuries received in the state of Kansas and paid by each workers' compensation insurance carrier, self-insurer and group-funded workers' compensation pool during such period.

74-713. Same; collection of proportionate amounts; rules and regulations; maximum amount; penalty for nonpayment.

The director shall provide by regulation for the collection of each carrier's, self-insurer's and group-funded workers' compensation pools' proportionate amount of the carrier's share of expense. The maximum amount which shall be collected from any carrier, self-insurer or group-funded workers' compensation pool shall be 3% of the workers' compensation benefits paid by such carrier, self-insurer or group-funded workers' compensation pool as listed by the director. Such amounts shall be paid within 30 days from the date that notice is served upon such carrier, self-insurer or group-funded workers' compensation pool. If such amounts are not paid within such period, the director may assess a civil penalty equal to 10% of the amount so unpaid for each 30 days the liability remains due and unpaid, and such civil penalty shall be collected at the same time and as a part of the original amount as determined by the director under the terms of this act. Upon assessment, if the total dollar amount due is $10 or less, the amount due is waived.

74-714. Same; failure to pay assessment more than 60 days after notice; suspension or revocation of carrier's authority, when; forfeiture of bond by self-insurer; suspension or revocation of group-funded workers' compensation pool's certificate of authority.

If any carrier fails to pay the amounts assessed by the director as provided in this act for a period of more than 60 days from the time notice of such amount is first served to such carrier, the director shall make a verified report to the commissioner of insurance, who may suspend or revoke the authorization of such carrier to do business in the state. If any self-insurer fails to pay the amounts assessed by the director as provided in this act for a period of more than 60 days from the time notice of such amount is first served to such self-insurer, the self-insurer shall forfeit such self-insurer's bond. The director may set aside such forfeiture if the amount is paid. If any group-funded workers' compensation pool fails to pay the amounts assessed by the director as provided in this act for a period of more than 60 days from the time notice of such amount is first served to such pool, the director shall make a

verified report to the commissioner of insurance, who may suspend or revoke such pool's certificate of authority.

74-715. Same; workmen's compensation fee fund; disposition of moneys received by director.

There is hereby created in the state treasury a fund to be called the workmen's compensation fee fund. The workers compensation director shall remit all moneys received by or for such director from fees, charges or penalties which prior to the effective date of this act was required by law to be credited to the workmen's compensation fee fund to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury. Ten percent of each such deposit shall be credited to the state general fund and the balance shall be credited to the workmen's compensation fee fund. All expenditures from the workmen's compensation fee fund shall be made in accordance with appropriation acts upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the workmen's compensation director or by a person or persons designated by the director.

74-716. Same; reports of compensation payments to director, when.

The director may require from each workers' compensation insurance carrier, self-insurer or group-funded workers' compensation pool, at such time and in accordance with regulations of the director, reports of all payments of compensation made by such workers' compensation insurance carrier, self-insurer or group-funded workers' compensation pool during any period.

74-717. Same; rules and regulations.

The director is authorized to establish rules and regulations to carry out the provisions of this act.

74-718. Same; no charges or expenses until July 1, 1962.

No charges, amounts or expenses shall be charged to workmen's compensation insurance carriers or self-insurers under K.S.A. 74-712 to 74-717, inclusive, and 74-719 until July 1, 1962, but in all other respects such sections shall be in effect as and when provided in section 11 [*] of this act.

[*Section 11 provided act to take effect June 30, 1961.]

74-719. Judicial review of director's actions.

Any action of the director of workers' compensation pursuant to K.S.A. 74-712 through 74-718, and amendments thereto, is subject to review in accordance with the Kansas judicial review act.

75-5708. Division of workers compensation, establishment and administration; director of workers compensation, assistant directors, administrative law judges; appointment, compensation, qualifications; dismissal or suspension of appointees, grounds.

(a) There is hereby established within and as a part of the department of labor a division of workers compensation. The division shall be administered, under the supervision of the secretary of labor, by the director of workers compensation, who shall be the chief administrative officer of the division. The director of workers compensation shall be appointed by the secretary of labor and shall serve at the pleasure of the secretary. The director shall be in the unclassified service under the Kansas civil service act and shall receive an annual salary fixed by the secretary of labor, with the approval of the governor. The director of workers compensation shall be an attorney admitted to practice law in the state of Kansas. The director shall devote full time to the duties of such office and shall not engage in the private practice of law during the director's term of office.

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

(c) Assistant directors shall be selected by the director of workers compensation, with the approval of the secretary of labor. Except as otherwise provided under K.S.A. 44-551, and amendments thereto, on and after July 1, 2013, administrative law judges shall be selected by the workers compensation and employment security boards nominating committee and appointed by the secretary of labor. Each assistant director and administrative law judge shall be subject to either dismissal or suspension of up to 30 days for any of the following:

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

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

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

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

Article 1.--FORMS

51-1-1. Forms.

Forms filed with the division of workers' compensation, whether they are forms designated to be furnished by the division of workers' compensation or forms which are designated to be procured by the party filing the forms, shall be forms prescribed by or substitute forms approved by the director of workers' compensation. (Authorized by K.S.A. 44-573; implementing K.S.A. 44-505, 44-508, 44-510b, 44-527, 44-532, 44-534, 44-534a, 44-542a, 44-543, 44-557, 44-567; effective Jan. 1, 1966; amended, E-74-31, July 1, 1974; amended May 1, 1975; amended May 1, 1983.)

Article 2.--FEES

51-2-1. Administrative fees.

(a) A fee of fifty (.50) cents per page for the first two pages reproduced and an additional ten (.10) cents for each subsequent page shall be charged for photocopying any instrument on file in the office of the workers' compensation director.

(b) An additional charge of fifty (.50) cents shall be made for certifying the copy of any instrument.

(c) A charge of two (2.00) dollars shall be made for obtaining a certification under the act of congress, plus fifty (.50) cents per page for copying the instruments to be certified.

(d) A charge to be levied by the director shall be made for each copy of the workers' compensation law book and each annual supplement.

The twenty (20) percent factor, which is provided in K.S.A. 74-715 and which applies to annual assessments of insurance carriers and self-insureds to be credited to the state general fund, shall not be computed on money collected for the sale of law books nor for copy charges, or other miscellaneous charges made to self-insureds or insurance carriers. (Authorized by K.S.A. 44-563; effective Jan. 1, 1966; amended Jan. 1, 1973; amended May 1, 1976; amended Feb. 15, 1977; amended May 1, 1978.)

51-2-4. Distribution of transcripts of hearing or deposition.

(a) Each shorthand reporter who takes and transcribes the proceedings at a hearing or testimony at a deposition, either of which is to be used as evidence in a claim before the division of workers compensation, shall furnish the original transcript of that hearing or deposition to the administrative law judge, one copy to the employer, insurance carrier or its attorney, and one copy to the claimant or the claimant's attorney.

(b) In cases involving the workers compensation fund, the reporter shall also furnish one copy of the transcript of hearing or deposition to the attorney representing that fund.

(c) In settlement cases, the reporter shall furnish the original transcript to the director within two weeks. The transcript of the settlement hearing shall constitute a written final award. Copies of the settlement transcript shall be furnished to other parties only on request. Settlement transcripts shall be bound only by stapling without front or back covers. Reporters' fees in settlement cases shall be paid by the respondent unless otherwise indicated in the settlement.

(d) The fees of the reporter for hearings and depositions, including all copies furnished as provided above, shall be paid by the respondent upon completion of the transcript by the reporter. The fees shall be assessed by the administrative law judge in the final award. If the fees are assessed against a party other than the respondent and if the respondent has paid the fees, the party against whom they are assessed shall make the necessary reimbursement.

(e) A determination of the reasonableness of a reporter fee shall be made by the administrative law judge if this fee is challenged. (Authorized by K.S.A. 44-573; implementing K.S.A. 44-552; effective Jan. 1, 1966; amended Jan. 1, 1969; amended Jan. 1, 1973; amended, E-74-31, July 1, 1974; amended May 1, 1975; amended Feb. 15, 1977; amended May 1, 1980; amended May 1, 1983; amended May 22, 1998.)

51-2-5. Special local administrative law judge fees and expenses.

(a) The fees for the services of each special local administrative law judge shall be as follows:

(1) A fee of $50.00 shall be assessed for each settlement hearing that is heard as part of a regular settlement docket.

(2) A fee of $50.00 shall be assessed for each settlement hearing that is heard at an individual setting.

(3) A fee of $100.00 shall be assessed for each preliminary hearing, including a preliminary award, and for each full hearing.

(4) A fee of $100.00 shall be assessed for each prehearing settlement conference.

(5) A fee of $85.00 per hour shall be assessed for preparing and rendering a final award. The total fee shall not exceed $500.00.

(b) If a special local administrative law judge incurs expenses conducting one or more settlement hearings in a location other than the judge's home community, the expenses shall be assessed, as costs, proportionately among the cases generating the expenses. (Authorized by K.S.A. 2004 Supp. 44-551 and K.S.A. 44-573; implementing K.S.A. 2004 Supp. 44-551; effective, T-84-16, July 26, 1983; amended, T-88-20, July 1, 1987; effective May 1, 1988; amended May 22, 1998; amended Nov. 14, 2005.)

51-2-6. Interpreters and interpreters' fees.

A qualified interpreter shall be appointed for each person whose primary language is one other than English or who is deaf, hard-of-hearing, or speech-impaired, for all hearings before an administrative law judge or the workers compensation board. A reasonable fee for the services of the interpreter shall be determined and fixed by the administrative law judge or the workers compensation board. The fee shall be paid by the respondent and shall not be assessed against the person whose primary language is one other than English or who is deaf, hard-of-hearing, or speech-impaired. (Authorized by K.S.A. 44-573; implementing K.S.A. 44-523, 44-534a, 44-551 as amended by L. 2001, ch. 121, sec. 4; effective June 21, 2002.)

Article 3.--TERMINATION OF COMPENSABLE CASES

51-3-1. Methods of termination.

Compensable cases shall be determined and terminated by only five procedures under the act:

(a) By filing a final receipt and release of liability pursuant to K.S.A. 44-527 and amendments thereto (b) by hearing and written award (c) by joint petition and stipulation subject to K.A.R. 51-3-16 (d) by settlement hearing before an administrative law judge; or

(e) by voluntary dismissal by the parties. (Authorized by K.S.A. 44-573; implementing K.S.A 44-521, 44-523, 44-534; effective Jan. 1, 1966; amended Jan. 1, 1969; amended Jan. 1, 1973; amended, E-74-31, July 1, 1974; amended May 1, 1975; amended Feb. 15, 1977; amended May 1, 1978; amended May 1, 1983; amended May 22, 1998; amended June 21, 2002.)

51-3-2. Final receipt and release of liability.

A final receipt and release of liability shall cover all compensation paid and shall not be taken until the disability has terminated, or in case of permanent partial disability, until a final determination of the percentage of that permanent partial disability can be definitely ascertained. No compromise settlements shall be made on a final receipt and release of liability. The physician's report or reports accompanying the final receipt and release of liability shall conform to the amount paid for the disability except when the rating is an average of the ratings expressed by the doctors.

Dates and figures required shall be specific and accurate, and only in exceptional instances where explanation is necessary may insertions or additions be made.

The final receipt and release of liability shall be signed by the claimant, and the signature shall be notarized. The final receipt and release of liabilty form shall be accompanied by a physician's final report and by an accident report if the report has not already been filed with the division of workers compensation. (Authorized by K.S.A. 44-573; implementing K.S.A. 44-527; effective Jan. 1, 1966; amended Jan. 1, 1973; amended Feb. 15, 1977; amended May 1, 1978; amended May 1, 1983; amended June 21, 2002.)

51-3-3. Disapproving final receipt and release of liability.

A final receipt and release of liability shall be disapproved by the director unless it meets the following requirements:

(a) The form shall be filled out completely.

(b) The form shall be accompanied by a physician's report, and the substance of the report shall conform to the information contained in the final receipt and release of liability.

(c) The form shall show that compensation has been paid in conformity with the requirements of the act.

(d) The form shall be filed within 60 days of execution.

(e) The form shall be executed within 60 days of the last payment of compensation.

(f) The form shall have the notarized signature of the claimant. (Authorized by K.S.A. 44-573, 44-5a21; implementing K.S.A. 44-527; effective Jan. 1, 1966; amended Feb. 15, 1977; amended May 1, 1978; amended May 1, 1980; amended June 21, 2002.)

51-3-4. Setting aside final receipt and release of liability.

To commence a proceeding to set aside a final receipt and release of liability, the party requesting the proceeding shall file with the director an application containing all necessary facts, together with an application for hearing, in the same manner as the procedure required for a claim to determine compensation.

The test to determine if the final receipt and release of liability should be set aside shall be whether it provides compensation for the injuries sustained in the accident or the disability from occupational disease for which the claim was made. (Authorized by K.S.A. 44-573; implementing K.S.A. 44-527; effective Jan. 1, 1966; amended Jan. 1, 1969; amended Jan. 1, 1973; amended Feb. 15, 1977; amended May 1, 1978; amended May 1, 1983; amended June 21, 2002.)

51-3-5. Submission letters.

If there is a dispute between the employer and the worker as to the compensation due and hearings are held before the administrative law judge for a determination of the issues, upon completion of submission of its evidence, each party shall write to the administrative law judge a letter submitting the case for decision. The administrative law judge shall not stay a decision due to the absence of a submission letter filed in a timely manner. The submission letter shall contain a list of the evidence to be considered by the administrative law judge in arriving at a decision. That list shall include the following information:

(a) The dates and name of the administrative law judge for each hearing held and a list of exhibits submitted at each hearing (b) the date and name of witnesses in each deposition taken and a list of exhibits submitted at each deposition (c) a description of any stipulations entered into by the parties outside of a hearing or deposition (d) a list of any other exhibits that should be contained in the record (e) an itemization of all medical expenses that are in issue (f) an itemization of all medical expenses not in issue but that a party wishes itemized in the award; and

(g) a list of the issues to be decided by the administrative law judge, together with a list of those items to which the parties have stipulated. (Authorized by K.S.A. 44-573; implementing K.S.A. 44-523, as amended by L. 1997, Ch. 125, Sec. 6, and K.S.A. 44-534, as amended by L. 1997, Ch. 125, Sec. 8; effective Jan. 1, 1966; amended Jan. 1, 1969; amended Jan. 1, 1973; amended Jan. 1, 1974; amended Feb. 15, 1977; amended May 1, 1978; amended May 1, 1983; amended May 22, 1998.)

51-3-5a. Procedure for preliminary hearings.

(a) Medical reports or any other records or statements shall be considered by the administrative law judge at the preliminary hearing. However, the reports shall not be considered as evidence when the administrative law judge makes a final award in the case, unless all parties stipulate to the reports, records, or statements or unless the report, record, or statement is later

supported by the testimony of the physician, surgeon, or other person making the report, record, or statement. If medical reports are not available or have not been produced before the preliminary hearing, either party shall be entitled to an ex parte order for production of the reports upon motion to the administrative law judge.

(b) If the decision of the administrative law judge is not rendered within five days of the hearing, the applicant's attorney shall notify the director, who shall make demand upon the administrative law judge for this decision.

(c) In no case shall an application for preliminary hearing be entertained by the administrative law judge when written notice has not been given to the adverse party pursuant to K.S.A. 44-534a. (Authorized by K.S.A. 44-573; implementing K.S.A 1996 Supp. 44-534a, as amended by L. 1997, Ch. 125, Sec. 9; effective May 1, 1976; amended Feb. 15, 1977; amended May 1, 1978; amended May 1, 1980; amended May 1, 1983; amended May 22, 1998.)

51-3-6. Out-of-state accidents; venue.

When an accident has occurred outside of the state of Kansas and the parties are subject to the jurisdiction of the Kansas workers compensation act, the county in which the hearing will be held shall be designated by the director. Applications by the employee or employer shall be considered in order to accommodate the parties in determining where a claim shall be set for hearing. (Authorized by K.S.A. 44-573 and implementing K.S.A. 44-549; effective Jan. 1, 1966; amended Jan. 1, 1973; amended Feb. 15, 1977; amended May 1, 1978; amended May 22, 1998.)

51-3-8. Pre-trial stipulations.

The parties shall be prepared at the first hearing to agree on the claimant's average weekly wage, unless the weekly wage is to be made an issue in the case.

(a) Before the first hearing takes place, the parties shall exchange medical information and confer as to what issues can be stipulated to and what issues are to be in dispute in the case. The following stipulations shall be used by the parties in every case:

QUESTIONS TO CLAIMANT

(1) In what county is it claimed that claimant met with personal injury by accident? If in a different county from that in which the hearing is held, then the parties shall stipulate that they consent to the conduct of the hearing in the county in which it is being held.

(2) Upon what date is it claimed that claimant met with personal injury by accident?

(3) Upon what date is it claimed that claimant met with personal injury by repetitive trauma?

QUESTIONS TO RESPONDENT

(4) Does respondent admit that claimant met with personal injury by accident on the date alleged?

(5) Does respondent admit that claimant met with personal injury by repetitive trauma on the date alleged?

(6) Does respondent admit that claimant's alleged personal injury ``arose out of and in the course'' of claimant's employment?

(7) Does respondent admit proper notice?

(8) Does respondent admit that the relationship of employer and employee existed?

(9) Does respondent admit that the parties are covered by the Kansas workers compensation act?

(10) Does respondent admit that claim was made?

(11) Did the respondent have an insurance carrier on the date of the alleged accident? If so, what is the name of the insurance company? Was the respondent self-insured?

(12) Does respondent admit that the accident or repetitive trauma was the prevailing factor causing the injury, the medical condition, and the resulting disability or impairment?

QUESTIONS TO BOTH PARTIES

(13) What was the average weekly wage?

(14) Has any compensation been paid?

(15) Has any medical or hospital treatment been furnished? Is claimant making claim for any future medical treatment?

(16) Has claimant incurred any medical or hospital expense for which reimbursement is claimed?

(17) What was the nature and extent of the disability suffered as a result of the alleged injury?

(18) What medical and hospital expenses does the claimant have?

(19) What are the additional dates of temporary total disability, if any are claimed?

(20) Is the workers compensation fund to be impleaded as an additional party?

(21) Have the parties agreed upon a functional impairment rating?

The same stipulations shall be used in occupational disease cases, except that questions regarding ``personal injury'' shall be changed to discover facts concerning ``disability from occupational disease'' or ``disablement.''

(b) An informal pretrial conference shall be held in each contested case before testimony is taken in a case. At these conferences the administrative law judge shall determine from the parties what issues have not been agreed upon. If the issues cannot be resolved, the stipulations and issues shall be made a part of the record.

(c) The respondent shall be prepared to admit any and all facts that the respondent cannot justifiably deny and to have payrolls available in proper form to answer any questions that might arise as to the average weekly wage. Evidence shall be confined to the matters actually ascertained to be in dispute. The administrative law judge shall not be bound by rules of civil procedure or evidence. Hearsay evidence may be admissible unless irrelevant or redundant.

(d) All parties shall be given reasonable opportunity to be heard. The testimony taken at the hearing shall be reported and transcribed. That testimony, together with documentary evidence introduced, shall be filed with the division of workers compensation, where the evidence shall become a permanent record. Each award or order made by the administrative law judge shall be set forth in writing, with copies mailed to the parties.

(e) Permission to withdraw admissions or stipulations shall be decided by the administrative law judge, depending on the circumstances in each instance.

(f) Subpoena forms shall be furnished by the director upon request. The party subpoenaing witnesses shall be responsible for the completion, service, and costs in connection with the subpoenas. (Authorized by K.S.A. 44-573; implementing K.S.A. 2010 Supp. 44-523, as amended by L. 2011, ch. 55, sec. 17, and K.S.A. 2010 Supp. 44-551; effective Jan. 1, 1966; amended Jan. 1, 1969; amended Jan. 1, 1973; amended Jan. 1, 1974; amended May 1, 1976; amended Feb. 15, 1977; amended May 1, 1978; amended May 1, 1983; amended May 22, 1998; amended Dec. 23, 2011.)

51-3-9. Medical evidence record for settlements.

The administrative law judge shall not issue a settlement award unless: (a) the claimant personally testifies; (b) medical testimony by a competent physician is introduced as evidence, either by the oral testimony of that physician, or through a documentary report of a recent physical examination of the claimant as to the extent of the claimant's disabilities; and (c) any other testimony as the administrative law judge may require for the proper determination of the extent of disability and the amount of compensation due, if any. If documentary evidence of a medical report covering physical examination of the claimant is introduced in evidence, the claimant shall be able to testify that the claimant has read that report or had the report read to him or her, and that the claimant fully understands the medical evidence as to disability.

If the injured worker submits to hospitalization, the records of the hospitalization and treatment, properly identified, may be received in evidence at a hearing on a claim.

Medical and hospital expenses shall be made part of the record. (Authorized by K.S.A. 44-573; implementing K.S.A. 44-531; effective Jan. 1, 1966; amended Jan. 1, 1973; amended Feb. 15, 1977; amended May 1, 1983.)

51-3-16. Closing cases by joint petition and stipulation.

If the claimant resides out of the state of Kansas and it would be a hardship to require the claimant to return to the state of Kansas for hearing and if the parties agree to settlement, the claim may be closed by an award on joint petition and stipulation. Joint petition and stipulation may also be used in death cases where the liability and the entitlement to compensation is clearly defined.

The format to be followed in submitting a case on joint petition and stipulation shall be substantially as set out in a format furnished by the division of workers' compensation.

In cases involving death, the joint petition shall be accompanied by certified copies of the certificate of death, marriage certificate, birth certificates, copies of letters of guardianship and conservatorship, if appropriate, and copies of journal entries of divorce if a prior marriage puts question on a spouse's entitlement to compensation. (Authorized by K.S.A. 44-573; implementing K.S.A. 44-531; effective Jan. 1, 1966; amended Jan. 1, 1973; amended May 1, 1978; amended May 1, 1983.)

Article 7.--MEASUREMENT OF DISABILITY

51-7-2. Days expressed as decimal.

In computing compensation for fractional parts of a week, record: one day as .14 of a week; two days as .29; three days as .43; four days as .57; five days as .71; and six days as .86. Compensation due shall be determined on the basis of a seven-day week. When the last day of disability is on a Sunday, compensation shall be paid for that day of disability. (Authorized by K.S.A. 44-573; implementing K.S.A. 44-510c; effective Jan. 1, 1966; amended May 1, 1983.)

51-7-8. Computation of compensation.

(a)(1) If a worker suffers a loss or the loss of use to a member and, in addition, suffers other injuries contributing to the temporary total disability, compensation for the temporary total disability shall not be deductible from the scheduled amount for those weeks of temporary total disability attributable to the other injuries.

(2) The weekly compensation rate for temporary total compensation shall be computed by multiplying .6667 times the worker's average weekly wage. This figure shall be subject to the statutory maximum set in K.S.A. 44-510c, and amendments thereto.

(b) If a healing period of 10% of the schedule or partial schedule is granted, not exceeding 15 weeks, the healing period shall be added to the weeks on the schedule or partial schedule before the following computations are made.

(1) If a loss of or the loss of use occurs to a scheduled member of the body, compensation shall be computed as follows:

(A) Deduct the number of weeks of temporary total compensation from the schedule;

(B) multiply the difference by the percent of loss or the loss of use to the member; and

(C) multiply the result by the applicable weekly temporary total compensation rate.

(2) If part of a finger, thumb, or toe is amputated, compensation shall be calculated as follows:

(A) Multiply the percent of loss, as governed by K.S.A. 44-510d, and amendments thereto, by the number of weeks on the full schedule for that member;

(B) deduct the temporary total compensation; and

(C) multiply the remainder by the weekly temporary total compensation rate.

(3) If a scheduled member other than a part of a finger, thumb, or toe is amputated, compensation shall be computed by multiplying the number of weeks on the schedule by the worker's weekly temporary total compensation rate. The temporary total compensation previously paid shall be deducted from the total amount allowed for the member.

(c)(1) Each injury involving the metacarpals shall be considered an injury to the hand. Each injury involving the metatarsals shall be considered an injury to the foot.

(2) If the injury results in loss of use of one or more fingers and also a loss of use of the hand, the compensation payable for

the injury shall be on the schedule for the hand. The percentage of permanent partial loss of use of the hand shall be at least sufficient to equal the compensation payable for the injuries to the finger or fingers alone.

(3) Each injury involving the hip joint shall be computed on the basis of a disability to the body as a whole.

(4) Each injury at the joint on a scheduled member shall be considered a loss to the next higher schedule.

(5) If the tip of a finger, thumb, or toe is amputated, the amputation does not go through the bone, and it is determined that a disability exists, the disability rating shall be based on a computation of a partial loss of use of the entire finger. (Authorized by K.S.A. 44-573; implementing K.S.A. 44-510d, as amended by 2011 HB 2134, sec. 8; effective Jan. 1, 1966; amended Jan. 1, 1971; amended Jan. 1, 1973; amended, E-74-31, July 1, 1974; amended May 1, 1975; amended Feb. 15, 1977; amended May 1, 1978; amended May 1, 1983; amended, T-88-20, July 1, 1987; amended May 1, 1988; amended May 22, 1998; amended Nov. 28, 2011.)

Article 9.--MEDICAL AND HOSPITAL

51-9-2. Appliances. The word ``apparatus'', contained in K.S.A. 44-510, shall mean such appliances as glasses, teeth, or artificial member.

When an appliance or apparatus is already being worn, and its usefulness is destroyed by an accident, the question as to whether the appliance is to be replaced as medical expense is one to be determined on the facts in each individual case. If an incident in direct connection with the work being done causes the destruction of the appliance being worn, it will be determined that personal injury by accident resulted, and the appliance is to be replaced as medical expense. (Authorized by K.S.A. 1977 Supp. 44-510, 44-573; effective Jan. 1, 1966; amended Feb. 15, 1977; amended May 1, 1978.)

51-9-5. Refusal to submit to medical treatment.

An unreasonable refusal of the employee to submit to medical or surgical treatment, when the danger to life would be small and the probabilities of a permanent cure great, may result in denial or termination of compensation beyond the period of time that the injured worker would have been disabled had the worker submitted to medical or surgical treatment, but only after a hearing as to the reasonableness of such refusal. (Authorized by K.S.A. 44-573; implementing K.S.A. 44-518, K.S.A. 1996 Supp. 44-510, as amended by L. 1997, Ch. 125, Sec. 4, and K.S.A. 44-573; effective Jan. 1, 1966; amended Jan. 1, 1973; amended May 1, 1978; amended May 22, 1998.)

51-9-6. Neutral physician.

If a neutral physician is appointed, the written report of that neutral physician shall be made a part of the record of hearing. Either party may cross examine each neutral physician so employed. The fee of the neutral physician giving such testimony shall be assessed as costs to a party at the administrative law judge's discretion. (Authorized by K.S.A. 44-573; implementing K.S.A. 44-516; effective Jan. 1, 1966; amended Jan. 1, 1973; amended, E-74-31, July 1, 1974; amended May 1, 1975; amended May 1, 1978; amended May 1, 1983.)

51-9-7. Fees for medical and hospital services.

Fees for medical, surgical, hospital, dental, and nursing services, medical equipment, medical supplies, prescriptions, medical records, and medical testimony rendered pursuant to the Kansas workers compensation act shall be the lesser of the usual and customary charge of the health care provider, hospital, or other entity providing the health care services or the amount allowed by the ``schedule of medical fees'' published by the Kansas department of labor, dated January 1, 2012, and approved by the director of workers compensation on May 20, 2011, including the ground rules incorporated in the schedule and the appendices, which is hereby adopted by reference.

This regulation shall be effective on and after January 1, 2012. (Authorized by and implementing K.S.A. 2010 Supp. 44-510i; effective Jan. 1, 1966; amended Jan. 1, 1969; amended Jan. 1, 1973; amended May 1, 1976; amended May 1, 1978; amended, T-88-20, July 1, 1987; amended May 1, 1988; amended Nov. 1, 1993; amended April 5, 1996; amended Aug. 29, 1997; amended Oct. 1, 1999; amended Dec. 1, 2001; amended Dec. 1, 2003; amended Dec. 2, 2005; amended Jan. 1, 2008; amended Jan. 1, 2010; amended Jan. 1, 2011; amended Jan. 1, 2012.)

51-9-10. Medical bills, reports, and treatment.

(a) Upon the completion of treatment in all compensation cases, physicians shall promptly notify the employer or carrier, and shall render their final bills forthwith. Bills for medical care providers and hospitals shall be itemized showing the date and the charge for services rendered. Separate bills should be presented to the employer or carrier by each surgeon, assistant, anesthetist, consultant, hospital, or nurse. In cases requiring prolonged treatment, physicians should submit partial bills, fully itemized, at intervals of at least 60 days.

(b)(1) Medical reports of the physician should be submitted on a periodic basis depending upon the nature and severity of the injuries involved and, in all cases, immediately upon request of the respondent or insurance carrier. A report shall be rendered on the date on which the physician releases the worker to return to work and forwarded to the employer or insurance carrier and to the employee, if requested.

(2) In cases of amputation, the physician shall mark the exact point of amputation on a diagram showing the member involved.

(3) The patient privilege preventing the furnishing of medical information by doctors and hospitals is waived by a worker seeking workers compensation benefits, and all reports, records, or other data concerning examinations or treatment shall be furnished to the employer or insurance carrier or the director at that individual's request without the necessity of a release by the worker.

(4) Unreasonable refusal by the worker to cooperate with the employer or insurance carrier or the director by failing to

furnish medical information releases for the worker's medical history may result in compensation being denied or terminated after hearing before the director.

(5) The employee shall immediately be furnished a copy of any medical report that authorizes return to work.

(c) Nurses, whether registered or practical, shall be furnished in an institution or the worker's home when the treating doctor recommends this nursing care. Nursing service by a member of the worker's family shall be provided if approved in advance by the treating physician. (Authorized by K.S.A. 1996 Supp. 44-510, as amended by L. 1997, Ch. 125, Sec. 4 and K.S.A. 44-573; effective Jan. 1, 1966; amended Jan. 1, 1969; amended Jan. 1, 1971; amended Jan. 1, 1973; amended, E-74-31, July 1, 1974; amended May 1, 1975; amended, E-76-23, May 30, 1975; amended Feb. 15, 1977; amended May 1, 1978; amended May 22, 1998.)

51-9-11. Transportation to obtain medical treatment.

(a) It shall be the duty of the employer to provide transportation to obtain medical services to and from the home of the injured employee whether those services are outside the community in which the employee resides or within the community.

(b) The employer shall reimburse the worker for the reasonable cost of transportation under the following conditions:

(1) if an injured worker does not have a vehicle or reasonable access to a vehicle of a family member living in the worker's home; or

(2) if the worker, because of the worker's physical condition, cannot drive and must therefore hire transportation to obtain medical treatment.

Reimbursement may include, among other things, reimbursement for the cost of taxi service, other public transportation, and ambulance service, if required by a physician, and for the cost of hiring another individual to drive the worker for medical treatment. Any charges presented to the employer or insurance carrier for payment shall be a fair and reasonable amount based on the customary charges for those services.

(c) If an injured worker drives that worker's own vehicle or drives, or is driven in, a vehicle of a family member living in the home of the worker, and if any round trip exceeds five miles, the respondent and insurance carrier shall reimburse the worker for an amount comparable to the mileage expenses provided in K.S.A. 44-515.

(d) In any dispute in regard to charges for mileage expenses, and on application by any party to the proceedings, the reasonable cost of transportation shall be determined by a hearing before a workers compensation administrative law judge. (Authorized by K.S.A. 44-573; implementing K.S.A. 1996 Supp. 44-510, as amended by L. 1997, Ch. 125, Sec. 4; effective May 1, 1980; amended May 1, 1983; amended May 22, 1998.)

51-9-15. Requirements for submission of data.

(a) Each insurance carrier, self-insured employer, and group-funded workers compensation pool selected to provide information to the director's database on claim characteristics and costs shall submit this information according to the instructions in the Kansas department of health and environment's ``Kansas workers compensation health insurance information system technical manual, 2002,'' published January 1, 2002 and hereby adopted by reference.

(b) Each health care facility selected to provide information to the director's database on claim characteristics and costs shall submit a statistical sampling of diagnosis-related groups (DRG) for hospital inpatient care if required by the director. (Authorized by K.S.A. 74-717, 44-557a, 44-573; implementing K.S.A. 44-557a, 74-716; effective Aug. 9, 2002.)

51-9-16. Submission of data on expenditures for health care services.

(a) Each insurance carrier, self-insured employer, group-funded workers compensation pool, and health care facility shall submit a summary of medical records and related charges if either of the following conditions is met:

(1) The total cost for any workers compensation medical claim exceeds $150,000.

(2) Any medical treatment in the workers compensation claim continues for more than 60 months.

(b) Complete medical and billing records may be required by the division to be submitted for individually selected claims or for randomly selected claims to evaluate trend developments. (Authorized by K.S.A. 74-717, 44-573; implementing K.S.A. 2001 Supp. 44-510i, K.S.A. 74-716; effective Aug. 16, 2002.)

51-9-17. Release 3 standards for trading partner profiles; submission of data; first reports of injury.

(a) Each insurer, group-funded workers compensation pool, and self-insured employer shall participate in the electronic data interchange (EDI) program and shall submit to the director a completed EDI trading partner profile at least 30 days before submitting claim information pursuant to the international association of industrial accident boards and commissions' release 3 standards, as provided in K.S.A. 44-557a and amendments thereto. The EDI trading partner profile shall be completed according to the ``Kansas EDI release 3 guide for reporting first (FROI) and subsequent (SROI) reports of injury'' as revised on October 16, 2012 by the Kansas department of labor and hereby adopted by reference. This document shall be referred to as the ``Kansas EDI release 3 guide'' in this regulation.

(b) Each insurer, group-funded workers compensation pool, and self-insured employer shall report to the director within five days any changes to information submitted in the EDI trading partner profile.

(c) All claim information submitted pursuant to K.S.A. 44-557a, and amendments thereto, by electronic data interchange shall be submitted according to the Kansas EDI release 3 guide.

(d) All claim information submitted pursuant to K.S.A. 44-557a, and amendments thereto, and the Kansas EDI release 3 guide's first report of injury, commonly called ``FROI 00,''

shall be considered the filing of an accident report pursuant to K.S.A. 44-557, and amendments thereto. This information shall not be open to public inspection, except as provided in K.S.A. 44-550b and amendments thereto.

(e) All claim information submitted pursuant to K.S.A. 44-557a, and amendments thereto, and the Kansas EDI release 3 guide shall be considered a medical record to the extent that the information refers to an individual worker's identity. No references in the claim information to an individual worker's identity shall be open to public inspection, except as provided in K.S.A. 44-550b and amendments thereto. For purposes of this regulation, the claim number used by an insurance carrier, self-insured employer, or group-funded workers compensation pool to identify an individual worker's claim shall be considered a reference to the individual worker's identity.

(f) On or before the compliance dates specified in paragraphs (g)(1)-(3), each insurer shall file claim information for all ``lost time/indemnity'' and ``denied'' cases through EDI rather than by submitting paper forms. The insurer shall file the electronic form in accordance with the Kansas EDI release 3 guide.

(g) Each insurer shall comply with the implementation schedule for reporting electronic FROI or SROI specified in this subsection. The insurer's implementation schedule shall be one of three ``test-to-production'' periods as specified in paragraphs (g)(1)-(3). Each insurer shall be assigned to the first, second, or third test-to-production period by the director. Each claim administrator voluntarily submitting claims as EDI filings in production status using the international association of industrial accident boards and commissions' (IAIABC's) release 1 national standard shall convert to release 3 and shall be in production status by the same date as that required for the first group of insurers specified in paragraph (g)(1). Each test-to-production period shall consist of three calendar months.

(1) The compliance date for the first test-to-production period shall be April 1, 2013. The compliance date for that insurer's implementation schedule shall be June 30, 2013.

(2) The compliance date for the second test-to-production period shall be July 1, 2013. The compliance date for that insurer's implementation schedule shall be September 30, 2013.

(3) The compliance date for the third test-to-production period shall be October 1, 2013. The compliance date for that insurer's implementation schedule shall be December 31, 2013. (Authorized by K.S.A. 44-573 and K.S.A. 74-717; implementing K.S.A. 2011 Supp. 44-550b, K.S.A. 44-557, K.S.A. 2011 Supp. 44-557a, and K.S.A. 74-716; effective Jan. 1, 2004; amended June 17, 2005; amended Feb. 8, 2013.)

Article 11.--WAGES

51-11-6. Computing employers gross pay-roll.

In computing the gross annual payroll for an employer to determine whether they are subject to the workers' compensation act, all payroll paid by that employer to all workers shall be included. The computation shall include all payroll whether or not that payroll is paid to employees in the state of Kansas or outside the state of Kansas.

The provision in K.S.A. 44-505 excluding the payroll of workers who are members of the employer's family shall not apply to corporate employers.

A corporate employer's payroll for purposes of determining whether the employer is subject to the workers' compensation act shall be determined by the total amount of payroll paid to all corporate employees even when a corporate employee has elected out of the workers' compensation act pursuant to K.S.A. 44-543. (Authorized by K.S.A. 44-573; implementing K.S.A. 44-505, 44-543; effective May 1, 1978; amended May 1, 1983.)

Article 12.--INJURIES OCCURRING INSIDE OR OUTSIDE THE STATE OF KANSAS

51-12-2. Notices.

(a) Employers operating under this act shall post notice in one or more conspicuous places advising employees what to do in case of injury. This notice form may be obtained at no cost from the division of workers compensation.

(b) Immediately upon receiving notice of injury or death of an employee, the employer shall mail or deliver to the employee or legal beneficiary a copy of the appropriate division of workers compensation form. (Authorized by K.S.A. 44-573; implementing K.S.A. 44-5,101 and K.S.A. 44-5,102; effective May 22, 1998.)

Article 13.--ELECTIONS

51-13-1. Employer's election to come under the act.

(a)(1) A parent company shall not file an election to cover itself and a subsidiary; each entity shall file an election on its own behalf.

(2) Failure of an employer to cover its employees by means of insurance policy or through an approved self-insurance plan shall result in the employer being a non-qualified self-insurer and shall result in the employer paying direct compensation benefits to the injured employee.

(b) The election by individuals, partners, and all self-employed persons to bring themselves within the provision of the workers compensation act shall be signed by the individual or partner and by a representative of the insurance carrier issuing the insurance policy. (Authorized by K.S.A. 44-573; implementing K.S.A. 44-505, as amended by L. 1997, Ch. 125, Sec. 2; effective Jan. 1, 1966; amended Jan. 1, 1969; amended Jan. 1, 1973; amended, E-74-31, July 1, 1974; amended May 1, 1975; amended, E-76-23, May 30, 1975; amended May 1, 1976; amended Feb. 15, 1977; amended May 1, 1978; amended May 1, 1983; amended May 22, 1998.)

Article 14.--SECURING PAYMENT OF COMPENSATION BY INSURANCE AND SELF-INSURANCE

51-14-4. Self-insurance.

An employer operating under the act shall only become qualified as a self-insurer through the process of applying to the division of workers' compensation for a self-insurance permit. An employer making an application shall, upon the request of the director, submit information that the director may require to effectively evaluate the financial status of the employer. An application for a self-insurance permit or a self-insured employer seeking a renewal permit, shall, if the director requests, pay the fees of a consultant approved by the division of workers' compensation to determine if the employer has the financial ability to become self-insured or to have his self-insurance permit renewed.

The applicant for a new permit or an employer seeking a renewal permit shall furnish to the division of workers' compensation a bond written by a surety company admitted to the state, and authorized by the Kansas insurance department to write surety bonds as required by the division. The bond shall be in an amount to adequately insure that if the employer should become insolvent, payments on all claims will be guaranteed to the injured workers.

The applicant for a new permit or an employer seeking a renewal permit shall furnish a certificate of excess insurance in an amount that may be required by the division of workers' compensation, and the division shall be notified by the self-insured and insurance carrier at least 20 days prior to the cancellation or non-renewal of any excess insurance policy. The excess workers' compensation insurance shall be in conformity with Kansas insurance statutes and regulations of the Kansas insurance commissioner.

An applicant for a new permit or an employer seeking a renewal permit shall set up financial reserves, furnish letters of credit or provide other security in amounts and in a manner directed by the division of workers' compensation to insure the payment of all workers' compensation claims as may be required by the Kansas workers' compensation act.

An employer shall furnish to the division of workers' compensation any other information the division may request which will aid in fairly and adequately evaluating an application for a new or a renewal permit for self-insurance.

The self-insurance permit of any employer shall expire on the anniversary date of the issuance of a self-insurance permit and any anniversary date thereafter, except when it has been renewed by the division prior to that date. The employer shall furnish any information that the division of workers' compensation may require to effectively evaluate an application to renew a self-insurance permit at least 45 days prior to the anniversary date of the original permit.

An employer whose original or renewal application for self-insurance has been denied, or who takes exception to insurance or reserve requirements may request a reconsideration by the division of workers' compensation. The request shall be made within 20 days of the receipt by the employer of the information which the applicant wishes reconsidered. If the employer desires to have a record of the hearing, the reporter's costs shall be assessed to the employer. (Authorized by K.S.A. 44-573; implementing K.S.A. 44-505b, 44-505e, 44-505f, 44-532; effective Feb. 15, 1977; amended May 1, 1978; amended May 1, 1983; amended May 1, 1984.)

Article 15.--WORKERS COMPENSATION FUND

51-15-2. Workers compensation fund.

(a) Insurance carriers and self-insureds shall not withhold compensation from an injured employee during negotiations with the workers compensation fund but shall pay compensation due under the act and then seek reimbursement for any compensation paid.

(b) The workers compensation fund shall be entitled to a hearing on the question of its liability imposed by the provisions of K.S.A. 44-532a. The administrative law judge may award compensation pursuant to K.S.A. 44-532a against the workers compensation fund following a preliminary hearing if the fund was properly impleaded and given the statutory notice of the hearing.

(c) ``First full hearing,'' as used in K.S.A. 44-567(c)*, as amended, means the first hearing before an administrative law judge, other than a preliminary hearing provided by K.S.A. 1996 Supp. 44-534a, as amended, at which pre-trial stipulations are taken and testimony is presented. (Authorized by K.S.A. 44-573; implementing K.S.A. 44-566, K.S.A. 1996 Supp. 44-566a, as amended by L. 1997, Ch. 125, Sec. 15, K.S.A. 44-569, K.S.A. 44-569a, and K.S.A. 1996 Supp. 44-534a, as amended by L. 1997, Ch. 125, Sec. 9; effective, E-74-31, July 1, 1974; effective May 1, 1975; amended May 1, 1976; amended Feb. 15, 1977; amended May 1, 1978; amended May 1, 1982; amended, T-88-20, July 1, 1987; amended May 1, 1988; amended May 22, 1998.)

[*Regulation 51-15-2(c) refers to `first full hearing' as used in K.S.A. 44-567(c), but in 1997, 44-567(c) became 44-567(d).]

Article 17.--TIME, COMPUTATION AND EXTENSION

51-17-2. Facsimile filing.

Any party may file by fax directly to the division of workers compensation.

(a) Definitions. As used in this rule, unless the context requires otherwise, these definitions shall apply.

(1) ``Document'' includes not more than one pleading and all exhibits.

(2) ``Facsimile filing'' or ``filing by fax'' means the facsimile transmission of a document to the division for filing with the division.

(3) ``Facsimile machine'' means a machine that can send a facsimile transmission.

(4) ``Facsimile transmission'' means the transmission of a copy of a document by a system that encodes a document into electronic signals, transmits the signals over a telephone line, and reconstructs the signals to print a duplicate of the document at the receiving end.

(5) ``Fax'' is an abbreviation for ``facsimile'' and refers, as indicated by the context, to facsimile transmission or to a document so transmitted.

(6) ``Fax filing agency'' means an entity that receives documents by fax for processing and filing with the division.

(7) ``Service by fax'' means the transmission of a document to a party under these rules.

(8) ``Transmission record'' means the document printed by the sending facsimile machine stating the telephone number of the receiving machine, the number of pages sent, the transmission time, and an indication of errors in transmission.

(b) Form of documents.

(1) The document placed in the transmitting fax machine shall comply with all applicable rules on the form, format, and signature of papers.

(2) The first page of each document filed by fax shall include the words ``by fax.'' Each page shall be numbered and shall include an abbreviated caption of the case and an abbreviated title of the document. The attorney shall also include the attorney's name, address, telephone number, fax number, and supreme court registration number on the document.

(3) The cover sheet required by paragraph (c)(3) and any special processing instructions are not included in the 10-page limitation in (c)(1).

(c) Methods of filing.

(1) A party may file by fax directly to the division of workers compensation, at the facsimile numbers authorized, a document of not more than 10 pages, excluding the required cover sheet. A document may not be split into multiple fax transmissions to avoid the page limitation.

(2) The facsimile machine shall be available on a 24-hour basis. This provision shall not prevent the division from sending documents by fax or providing for normal repair and maintenance of the fax machine. Facsimile filings received in the division shall be deemed filed as of the time printed by the division facsimile machine on the final page of the facsimile document received.

(3) Each facsimile document filed shall be accompanied by the facsimile transmission cover sheet, which shall contain the date, the docket number, case caption, attorney name, address, supreme court registration number, telephone and fax number, and the name of the document. The cover sheet shall be the first page transmitted.

(4) A party filing by fax shall cause the transmitting facsimile machine to print a transmission record of each filing by fax. If the facsimile filing is not filed with the division because of an error in the transmission of the document the occurrence of which was unknown to the sender, or a failure to process the facsimile filing when received by the division, the sender may move the administrative law judge or the workers compensation board for an order filing the document nunc pro tunc. The motion shall be accompanied by the transmission record, a copy of the document transmitted, and an affidavit of transmission by fax as set forth in a form specified by the director.

(d) Possession of documents. A party who files by fax shall retain the original document in the party's possession or control during the pendency of the action and shall produce this document upon request by the division, administrative law judge, workers compensation board, or any party to the action. Upon failure to produce such document, the fax may be stricken, and the party may be subject to sanctions under K.S.A. 44-5,120(d)(20), as amended.

(e) Signatures. A signature reproduced by facsimile transmission shall be treated as an original signature.

(f) Fax filing agency. A party may transmit a document, without page limitation, by fax to a fax filing agency for filing with the division. The fax filing agency shall act as the agent of the filing party and not as an agent of the division.

(g) Service of papers by facsimile transmission.

(1) The division may serve a notice by fax if the notice may be served by mail. The notice may be served by fax on a party who consents to fax service under paragraph (4) of this subsection.

(2) Service of papers may be made by facsimile transmission only in proceedings subject to these regulations and only on an attorney representing a party.

(3) Service by fax shall be made by transmitting the document to the attorney's designated facsimile machine telephone number.

(4) An attorney shall be deemed to consent to service by fax in a proceeding by any of these methods:

(A) filing a document by fax in that proceeding (B) serving a document by fax in that proceeding; or

(C) serving a pleading that includes the attorney's fax number on the pleading.

(5) An attorney who consents to fax service shall make his or her fax machine available for receipt of documents between 9:00 a.m. and 5:00 p.m., except on Saturday, Sunday, and legal holidays listed in K.S.A. 60-206(a), as amended. This provision shall not prevent the attorney from sending documents by fax or

providing for normal repair and maintenance of the fax machine during these hours.

(6) Service by fax is complete upon generation of a transmission record by the transmitting machine indicating the successful transmission of the entire document. Service that occurs after 5:00 p.m. shall be deemed to have occurred on the next day.

(7) A certificate of service by fax shall include the following:

(A) the date of transmission (B) the name and facsimile machine telephone number of the persons served (C) a statement that the document was transmitted by facsimile transmission and that the transmission was reported as complete and without error; and

(D) the signature of the attorney or the person making the transmission. (Authorized by K.S.A. 44-573; implementing K.S.A. 44-534, as amended by L. 1997, Ch. 125, Sec. 8, K.S.A. 1996 Supp. 44-534a, as amended by L. 1997, Ch. 125, Sec. 9, K.S.A. 1996 Supp. 44-551, as amended by L. 1997, Ch. 125, Sec. 12; effective May 22, 1998.)

Article 18.--APPEALS

51-18-2. Review by workers compensation board.

(a) The effective date of the administrative law judge's acts, findings, awards, decisions, rulings, or modifications, for review purposes, shall be the day following the date noted thereon by the administrative law judge.

(b) Application for review by the workers compensation board shall be considered as timely filed only if received in the central office or one of the district offices of the division of workers compensation on or before the tenth day after the effective date of the act of an administrative law judge.

(c) An application for review may be filed by facsimile directly to the division of workers compensation. (Authorized by K.S.A. 44-573; implementing K.S.A 1996 Supp. 44-525 and K.S.A. 1996 Supp. 44-551, as amended by L. 1997, Ch. 125, Sec. 12; effective Jan. 1, 1966; amended Jan. 1, 1969; amended Jan. 1, 1973; amended May 1, 1983; amended May 22, 1998.)

51-18-3. Applications for review.

Applications for review should specify the issues to be considered and the jurisdictional basis for the appeal from a preliminary hearing, pursuant to K.S.A. 1996 Supp. 44-534a, as amended. (Authorized by K.S.A. 44-573; implementing K.S.A. 1996 Supp. 44-551, as amended by L. 1997, Ch. 125, Sec. 12; effective May 22, 1998.)

51-18-4. Time schedule for briefs on review; summary calendar.

(a) Following an application for review by the workers compensation board, each brief that a party files shall be served upon opposing counsel and thereafter filed with the workers compensation board, division of workers compensation, according to the following schedule.

(1) The appellant's brief shall be submitted within 30 days from the date of filing the application for review.

(2) The appellee's brief shall be submitted within 20 days thereafter.

(3) The appellant may submit a reply brief limited to new issues raised in the appellee's brief within 10 days thereafter.

An original and five copies of each brief shall be filed with the workers compensation board. Every brief shall be supplied in two copies to all counsel of record.

(b) The workers compensation board may maintain a summary calendar. If a review involves no new questions of law and if oral argument is not deemed necessary for a fair hearing of the case, the workers compensation board may set the case on the summary calendar. When a case is placed on the summary calendar, it shall be deemed submitted to the board without oral argument unless a motion by one of the parties for oral argument is granted. This motion shall be served on all parties and filed with the board within 10 days after notice of calendaring has been mailed by the board and shall set forth the reasons why it is thought that oral argument would be helpful to the board. (Authorized by K.S.A. 44-573; implementing K.S.A. 1996 Supp. 44-551, as amended by L. 1997, Ch. 125, Sec. 12; effective May 22, 1998.)

51-18-5. Extensions of time.

An application for an extension of time for the performance of any act required by any person regarding review by the board shall be addressed to the workers compensation board. No extension shall be granted except on stated grounds reasonably indicating the necessity therefor. The consent of adverse parties to an application shall be considered but shall not be controlling. A copy of any application under this regulation shall be served on all parties. (Authorized by K.S.A. 44-573; implementing K.S.A. 1996 Supp. 44-551, as amended by L. 1997, Ch. 125, Sec. 12; effective May 22, 1998.)

51-18-6. Voluntary dismissals.

An application for review by the workers compensation board may be dismissed upon the agreement of all parties to the review. If a settlement is reached, the appellant shall promptly notify the workers compensation board. (Authorized by K.S.A. 44-573; implementing K.S.A. 1996 Supp. 44-551, as amended by L. 1997, Ch. 125, Sec. 12; effective May 22, 1998.)

Article 19.--APPLICATION FOR REVIEW AND MODIFICATION PURSUANT TO K.S.A. 44-528

51-19-1. Review and modification.

(a) When there has been an application for review or appeal upon an award and the same is either affirmed or modified, application for review and modification pursuant to K.S.A. 44-528 may still be made to the division. Initial hearings on such applications shall be conducted by an administrative law judge.

(b) Application for review and modification pursuant to K.S.A. 44-528 shall set forth at least one of the reasons contained therein.

(c) Review and modification applications should not be made more than once during any six-month interval except in highly unusual situations. However, upon the completion of vocational rehabilitation, as provided for under this act, the worker, employer, or insurance carrier shall have the right to seek a review and modification of the award rendered,

granting any compensation to the employee for any disability. (Authorized by K.S.A. 44-573; implementing K.S.A. 44-510g, 44-528, 44-573; effective Jan. 1, 1966; amended Jan. 1, 1973; amended, E-74-31, July 1, 1974; amended May 1, 1975; amended Feb. 15, 1977; amended May 1, 1978; amended May 22, 1998.)

Article 20.--GUARDS

51-20-1. Failure of employee to use safety guards provided by employer.

The director rules that where the rules regarding safety have generally been disregarded by employees and not rigidly enforced by the employer, violation of such rule will not prejudice an injured employee's right to compensation. (Authorized by K.S.A. 1977 Supp. 44-501, 44-573; effective Jan. 1, 1966; amended Jan. 1, 1973; amended Feb. 15, 1977; amended May 1, 1978.)

Article 21.--ASSIGNMENT OF COMPENSATION

51-21-1. Waiver of liability.

A worker, under the act, cannot contract with the employer to relieve the latter of liability in case of an accident. (Authorized by K.S.A. 44-573; implementing K.S.A. 44-514, as amended by L. 1997, Ch. 182, Sec. 72; effective Jan. 1, 1966; amended Feb. 15, 1977; amended May 1, 1978; amended May 22, 1998.)

Article 24.--REHABILITATION

51-24-1. Vocational rehabilitation.

(a) Each insurance carrier and employer shall furnish to the selected vocational rehabilitation vendor, or at the administrator's request, to the rehabilitation administrator, any medical reports that may be necessary to make an effective vocational rehabilitation determination.

(b) The rehabilitation administrator shall be the coordinator between the parties seeking a vocational assessment and the state or federal vocational rehabilitation agency or a qualified private agency. (Authorized by K.S.A. 44-573; implementing K.S.A. 44-510g; effective May 1, 1976; amended Feb. 15, 1977; amended May 1, 1978; amended May 1, 1983; amended March 30, 1992; amended May 22, 1998; amended June 21, 2002.)

51-24-3. Definitions.

As used in K.A.R. 51-24-1 through 51-24-10, the following definitions shall apply: (a) ``Director'' means the director of the Kansas division of workers compensation.

(b) ``Job placement specialist'' means a person who has provided the director with the necessary proof of eligibility for qualification under K.A.R. 51-24-5(c) and who has received a certification of qualification from the director.

(c) ``Office'' means a place in which business, professional, or clerical activities are conducted.

An office may be part of a home if both of the following conditions are met:

(1) A portion of the home is regularly and exclusively used only for business.

(2) The home is the principal place for the administrative or management activities of the business or is the principal place for the vendor to meet or deal with patients, clients, or customers in the normal course of business.

(d) ``Training facility'' means a private agency, facility, or employer rehabilitation service program that has filed with the director the necessary evidence for the director to deem that agency, facility, or employer rehabilitation service program qualified to perform rehabilitation education or training.

(e) ``Vendor'' means a vocational rehabilitation facility, institution, agency, or employer program pursuant to K.S.A. 44-510g and amendments thereto.

(f) ``Vocational rehabilitation counselor'' and ``counselor'' mean a person who has provided the director with the necessary proof of eligiblity for qualification under K.A.R. 51-24-5(a) and who has received a certification of qualification from the director.

(g) ``Vocational rehabilitation evaluator'' and ``evaluator'' mean a person who has provided the director with the necessary proof of eligibility for qualification under K.A.R. 51-24-5(b) and who has received a certification of qualification from the director. (Authorized by K.S.A. 44-573; implementing K.S.A. 44-510g; effective, T-88-20, July 1, 1987; effective May 1, 1988; amended June 21, 2002.)

51-24-4. Qualifications and duties of a vendor.

For vocational rehabilitation cases under the Kansas workers compensation act, each person, firm, or corporation proposing to qualify as a vendor shall file an application with the director. The application shall be updated if changes occur that could affect the standing of the applicant to become or remain qualified. Each application shall include the following: (a) A statement that the person, firm, or corporation will maintain an office in the state of Kansas or in the metropolitan Kansas City area capable of responding to written or telephone inquiries regarding cases referred to that vendor;

(b) the addresses and telephone numbers of the offices within and without the state of Kansas from which vocational rehabilitation services will be performed for cases under the Kansas workers compensation act;

(c) a listing of each person employed to perform services as a medical manager, counselor, evaluator, or job placement specialist for cases referred to that vendor and an indication of each person's discipline;

(d) a statement that the person, firm, or corporation will employ or contract with one or more persons qualified to perform work as a medical manager, counselor, evaluator, or job placement specialist as necessary to carry out the purpose of the referral;

(e) a statement that the person, firm, or corporation will be responsible for the appropriateness and timeliness of service delivery by each medical manager, counselor, evaluator, and job placement specialist employed or under contract to carry out the purpose of the referral;

(f) a statement indicating whether the person, firm, or corporation wants to be included in the list of vendors qualified and requesting to receive referrals from employers or the director;

(g) a statement that the person, firm, or corporation will report, in a form prescribed by the director, to the vocational rehabilitation administrator each referral received from an employer or insurance carrier and the date of the referral;

(h) a statement that the person, firm, or corporation will report upon the status of each evaluation 30 days after the referral and report upon the status of the evaluation and plan on each occasion upon which changes occur that affect the evaluation or plan. These reports shall be in a form prescribed by the director;

(i) a statement that the person, firm, or corporation will provide copies of all vocational assessments, plans, and progress reports to all parties involved, including attorneys for the claimant and respondent if it is a litigated case;

(j) a statement that the person, firm, or corporation will provide objective and impartial assessments of the injured worker's need for rehabilitation services;

(k) a statement that the person, firm, or corporation acknowledges that the authorization by the director to provide vocational rehabilitation services pursuant to the Kansas workers compensation act and regulations may be suspended or revoked for failure to comply with regulations adopted by the director; and

(l) a statement that the person, firm, or corporation will adhere to the fee schedule pursuant to K.S.A. 44-510i, and amendments thereto. (Authorized by K.S.A. 44-573; implementing K.S.A. 44-510g; effective, T-88-20, July 1, 1987; effective May 1, 1988; amended Nov. 27, 1989; amended March 30, 1992; amended June 21, 2002.)

51-24-5. Qualifications for counselor, evaluator, and job placement specialist.

(a) Each person seeking to qualify as a vocational rehabilitation counselor for cases under the Kansas workers compensation act shall:

(1) furnish proof to the director that the person has:

(A) a masters degree from a nationally accredited program in rehabilitation counselor education; or

(B)(i) a masters degree in counseling, guidance and counseling, clinical psychology, counseling psychology, clinical social work or any related field which includes nine hours of graduate course work in counseling; and

(ii) one year of experience as a vocational rehabilitation counselor or completion of a nationally accredited rehabilitation counselor internship program from a college or university; or

(C) 32 graduate hours from an accredited rehabilitation counseling program, including coursework from at least nine of the following graduate courses:

(i) Medical aspects of disability;

(ii) counseling theories;

(iii) individual and group appraisal;

(iv) career information service;

(v) evaluation techniques in rehabilitation;

(vi) placement process in rehabilitation;

(vii) psychological aspects of disability;

(viii) case management in rehabilitation;

(ix) utilization of community resources;

(x) survey of rehabilitation;

(xi) supervised practicum in rehabilitation; or

(D) a bachelors degree in rehabilitation services and three years of experience as a vocational rehabilitation counselor;

(2) furnish the director with the addresses and telephone numbers of that person's offices and the names of the vendors with whom that person is affiliated;

(3) acknowledge that the person's qualification may be suspended or revoked if the person performs work in a rehabilitation discipline other than a discipline in which that person has been found to be qualified by the director; and

(4) acknowledge that the person's qualification may be suspended or revoked if the person repeatedly fails to file reports with the director in a timely manner or fails to comply with the regulations adopted by the director.

(b) Each person seeking to qualify as a vocational rehabilitation evaluator shall:

(1) furnish proof to the director that the person has:

(A) a masters or doctoral degree in vocational evaluation, rehabilitation counseling or work adjustment, and one year of experience as a vocational evaluator; or

(B) a masters degree in counseling, psychology, adult education or any related field which includes at least nine graduate hours in testing, evaluation and assessment and one year of experience as a vocational evaluator; or

(C) one year of experience as a vocational evaluator and 32 graduate hours from an accredited rehabilitation counseling program, including coursework from at least nine of the following graduate courses:

(i) Medical aspects of disability;

(ii) counseling theories;

(iii) individual and group appraisal;

(iv) career information service;

(v) evaluation techniques in rehabilitation;

(vi) placement process in rehabilitation;

(vii) psychological aspects in disability;

(viii) case management in rehabilitation;

(ix) utilization of community resources;

(x) survey of rehabilitation; and

(xi) supervised practicum in rehabilitation; or

(D) a bachelors degree in vocational rehabilitation evaluation, psychology, special education or rehabilitation services and three years of experience as a vocational evaluator under the supervision of a masters degree vocational evaluator;

(2) furnish the director with the addresses and telephone numbers of that person's offices and the names of the vendors with whom that person is affiliated; and

(3) acknowledge that the person's qualification may be suspended or revoked if the person performs work in a rehabilitation discipline other than a discipline in which that person has been found to be qualified by the director; and

(4) acknowledge that the person's qualification may be suspended or revoked if the person repeatedly fails to file

reports with the director in a timely manner or fails to comply with the regulations adopted by the director.

(c) Each person seeking to qualify as a vocational rehabilitation job placement specialist shall:

(1) furnish proof to the director that the person has:

(A) a masters or bachelors degree in vocational rehabilitation counseling, vocational counseling, rehabilitation services or job placement; or

(B) a bachelors degree in counseling, sociology, psychology or any related field and one year of experience as a job placement specialist for disabled individuals; or

(C) at least two years of college level education and three years of experience as a job placement specialist for disabled individuals; or

(D) qualified as a vocational rehabilitation counselor under K.A.R. 51-24-5;

(2) furnish the director with the addresses and telephone numbers of the person's offices and the names of the vendors with whom that person is affiliated;

(3) acknowledge that the person's qualification may be suspended or revoked if the person performs work in a rehabilitation discipline other than a discipline in which that person has been found to be qualified by the director; and

(4) acknowledge that the person's qualification may be suspended or revoked if the person fails to file reports with the director in a timely manner or fails to comply with the regulations adopted by the director.

(d) Each person employed by or working under contract as a counselor, evaluator or job placement specialist for the Kansas department of rehabilitation services or other state or federal vocational rehabilitation agency shall be considered qualified in that person's discipline while working for that agency. (Authorized by K.S.A. 1988 Supp. 44-573; implementing K.S.A. 1988 Supp. 44-510g, as amended by 1989 SB 354, Sec. 1; effective, T-88-20, July 1, 1987; effective May 1, 1988; amended Nov. 27, 1989.)

51-24-6. Qualification of private training facility.

Before a private training facility begins providing vocational rehabilitation training or education to persons under the Kansas workers' compensation act, the vendor formulating the training plan shall file with the vocational rehabilitation administrator a sufficient description of the course work and qualifications of the individuals performing the training or education to satisfy the vocational rehabilitation administrator that the training is adequate and appropriate to fulfill the goal of the plan. (Authorized by K.S.A. 44-573; implementing K.S.A. 44-510g, as amended by 1987 HB 2573, Sec. 1; effective, T-88-20, July 1, 1987; effective May 1, 1988.)

51-24-8. Standards of conduct for vocational rehabilitation vendors and vocational rehabilitation professionals.

Each vocational rehabilitation vendor (vendor) and vocational rehabilitation professional (professional) who has been authorized by the director to provide vocational rehabilitation services pursuant to the Kansas workers compensation act and regulations: (a) shall adhere to all applicable federal, state and local laws establishing and regulating business practices;

(b) shall adhere to the Kansas workers compensation law and regulations;

(c) shall report any known violation of these standards of conduct using the complaint procedures established in K.A.R. 51-24-9;

(d) shall not circumvent a standard of conduct through the actions of another;

(e) shall not engage in conduct involving dishonesty, fraud, deceit, or misrepresentation;

(f) shall not engage in any conduct that adversely affects the vendor's or professional's fitness to perform assessments, evaluations, plans or any other act to be performed under the Kansas workers compensation act and regulations;

(g) shall not conceal or knowingly fail to disclose that which the vendor or professional is required by law to reveal;

(h) shall not knowingly use perjured testimony or false evidence;

(i) shall not knowingly make false statements of law or fact;

(j) shall not participate in the creation or preservation of evidence which the vendor or professional knows, or should reasonably know, is false;

(k) shall not counsel or assist in conduct that the vendor or professional knows to be illegal or fraudulent;

(l) shall not misrepresent himself or herself, the job duties or credentials of the vendor or professional nor promise results or offer services the vendor or professional has not been approved by the director to provide;

(m) shall not solicit referrals either directly or indirectly by offering to any one person or firm money or gifts, excluding food and beverages, that have a fair market value of more than $50 per annum;

(n) shall not accept or continue employment or other contractual relationships if the exercise of professional judgement by the vendor or professional will be affected by financial, business, property, or personal interests of the vendor or professional;

(o) shall not accept a referral of a person who may unduly influence the vendor's or professional's actions;

(p) shall not provide any services in investigation of claims or negotiating for, or attempting to effect the settlement of a claim;

(q) shall not request a medical provider to change restrictions or ratings issued by that medical provider. The furnishing of occupational and medical information to a medical provider so that the medical provider has adequate information on which to base a medical decision shall not be considered as a request that a medical provider change a restriction or rating;

(r) shall not accompany the injured worker during medical treatment or medical consultations if either the injured worker or the medical provider objects to the presence of the vendor or professional;

(s) shall not attempt to interpret the workers compensation

act or regulations for a party but shall, at the first interview with an injured worker, furnish to the injured worker information prepared by the director for such purpose and maintain in the case file acknowledgement from the injured worker that such information was furnished;

(t) shall not communicate as to the merits of a litigated case or request specific case direction from the administrative law judge or hearing officer before whom the case is pending nor the rehabilitation administrator assigned except:

(1) in the course of the official proceedings in the case;

(2) in writing, if a copy is promptly furnished to each party or each party's attorney; or

(3) as otherwise authorized by law; and

(u) shall establish a bookkeeping system which insures that all charges made by the vendor or professional are for actual services rendered and that reports to the director regarding such charges are accurate and reflect entirely the consideration asked and given for services in each case. (Authorized by K.S.A. 1991 Supp. 44-573; implementing K.S.A. 1991 Supp. 44-510g; effective March 30, 1992.)

51-24-9. Procedure for reviewing and processing complaints of violations of standards of conduct.

(a) Individuals and firms approved by the director as qualified vocational rehabilitation professionals and vendors under K.A.R. 51-24-1 et seq., shall be subject to disciplinary action for violation of the standards of conduct set forth in K.A.R. 51-24-8.

(b) Oral or unsigned complaints of violations of the standards of conduct shall be considered as informal complaints and shall be handled by the director or administrator as deemed appropriate.

(c) Complaints of standards of conduct violations that are in writing and signed by the complaining party shall be considered formal complaints.

(d) The following procedure shall be used to address formal complaints of standards of conduct violations: (1) Each formal complaint of standards of conduct violations shall be in writing, signed by the complaining party and directed to the administrator. The complaint shall identify the vendor or professional complained of (hereinafter referred to as respondent), the nature of the violation and a statement of the facts constituting the violation.

(2) A copy of the complaint shall be sent by the administrator to each respondent by certified mail, return receipt requested. The complaining party shall be notified by the administrator of receipt of the complaint.

(3) Each respondent shall have 30 days from the date of the certified receipt to deliver to the administrator a factual written response to each particular of the complaint. If requested in writing by respondent before the expiration of the 30-day response time, one 30-day extension of time to file a response may be granted by the administrator. Failure to provide a timely written response to the administrator shall result in immediate suspension of the qualification of the respondent. This suspension shall remain in effect until the response is received or until appropriate hearing processes are completed.

(4) Each respondent shall cooperate fully with attempts at resolving the complaint. Cooperation shall include: (A) responding fully and promptly to the administrator, administrative law judge or hearing officer concerning any questions on the subject of the complaint;

(B) providing copies of pertinent records, reports, logs, data or cost information; and

(C) attending meetings or hearings held by the administrator, administrative law judge or hearing officer on the subject of the complaint.

(5) Meetings with the complaining party and the respondent, individually or jointly, may be scheduled by the administrator prior to the appointment of an administrative law judge or hearing officer for: (A) clarification;

(B) explanation;

(C) settlement of issues;

(D) obtaining information;

(E) instructing parties to the complaint; or

(F) to address the issues.

(6) Upon receipt of a response, the complaint and response shall be reviewed by the administrator and, within 30 days, a conclusion shall be reached by the administrator as to whether there is sufficient indication that respondent may have violated the standards of conduct.

(7) If the administrator concludes that there is not substantial indication that respondent violated the standards of conduct, the complaint shall be dismissed by the administrator. The complaining party and the respondent shall be notified by the administrator of the actions of the administrator and the reasons for the conclusions reached.

(8) If the administrator concludes that there is a substantial indication that respondent may have violated the standards of conduct, an administrative law judge or hearing officer shall be appointed by the director to hear the complaint. The administrative law judge or hearing officer shall conduct a hearing or hearings and make recommendations as to whether disciplinary action should be taken, and if so, recommend the degree and type of discipline warranted.

(9) Any evidentiary hearing conducted by the administrative law judge or hearing officer regarding the complaint shall be recorded verbatim by a certified shorthand reporter. If there is a decision not to discipline the respondent, the verbatim notes of the reporter shall not be transcribed. However, such notes shall be retained as part of the records of the division of workers compensation. If there is a decision to discipline the respondent, the recording of the hearing shall be transcribed and retained as part of the records of the division of workers compensation. Costs of the shorthand reporter shall be assessed to respondent if it is found discipline is warranted.

(10) If within 10 days the complaining party, respondent or administrator request a review of the recommendations of the administrative law judge or hearing officer, a review, de novo, shall be conducted by the director on the record of the hearing or hearings and the recommendations of the administrative law judge or hearing officer.

(11) Within 20 days after completion of the review, a decision shall be entered by the director which may either

affirm, modify or reverse the decision of the administrative law judge or hearing officer. The director's determination shall be in writing, with copies sent to the: (A) administrative law judge or hearing officer;

(B) administrator;

(C) complaining party; and

(D) respondent.

(12) Any action of the director shall be subject to judicial review in accordance with the act for judicial review and civil enforcement of agency actions, K.S.A. 77-601 et seq. and amendments thereto.

(e) If disciplinary measures are imposed on a professional at the final level of hearing or appeal, and the disciplinary measures taken prevent the professional from completing all or part of the rehabilitation process on a case or cases assigned to the professional, the vendor for whom the disciplined professional was performing services shall effect the reassignment of the case to another professional.

(f) If disciplinary measures are imposed on a vendor at the final level of hearing or appeal, and the disciplinary measures taken prevent the vendor from completing all or part of the rehabilitation process on a case or cases assigned to the vendor, the administrator shall effect the reassignment of the case to another vendor. (Authorized by K.S.A. 1990 Supp. 44-573; implementing K.S.A. 44-510g, as amended by 1991 HB 2457, Sec. 4; effective March 30, 1992.)

51-24-10. Penalties for violations of standards of conduct.

If a person or firm qualified by the director pursuant to K.A.R. 51-24-4 or K.A.R. 51-24-5 is found, following the procedure in K.A.R. 51-24-9, to have violated the standards of conduct set out in K.A.R. 51-24-8, any combination of the following disciplinary measures may be imposed:

(a) the respondent may be issued a letter of censure by the director;

(b) the respondent may be required to create and implement a written corrective action plan acceptable to the director;

(c) the respondent may be prohibited from undertaking work on any new cases for a stated period of time;

(d) the respondent may be prohibited from working on the respondent's existing caseload for a stated period of time;

(e) the respondent may be permanently or temporarily prohibited from accepting cases from specific referral sources;

(f) the respondent's qualification may be revoked for a stated period of time; or

(g) the respondent's qualification may be revoked permanently. (Authorized by K.S.A. 1990 Supp. 44-573; implementing K.S.A. 44-510g, as amended by 1991 HB 2457, Sec. 4; effective March 30, 1992.)

Supreme Court Rule

RULE 9.04

WORKERS COMPENSATION CASE

(a) **Petition.** When an appeal is taken from the workers compensation board to the Court of Appeals under K.S.A. 44-556, the appellant must file with the clerk of the appellate courts a petition for judicial review in compliance with K.S.A. 77-614. The petition for judicial review must be:

(1) accompanied by certified copies of the decision(s) of the administrative law judge, the request for workers compensation board review, and the order of the workers compensation board;

(2) accompanied by the docket fee, any applicable surcharge, and the docketing statement required by Rule 2.04; and

(3) served in compliance with K.S.A. 77-613 through 77-615.

(b) **Cross-appeal.** If a party seeks to cross-appeal under K.S.A. 44-556, the party must file a cross-petition for review that complies with K.S.A. 77-614.

(c) **Record and Transcript Requests.** Not later than 14 days after the filing of a petition for judicial review under subsection (a), the appellant must:

(1) request in writing that the director certify the record of the proceedings;

(2) if a hearing before the board was recorded, request a transcript; and

(3) file copies of the requests for transcript and certification of the record with the clerk of the appellate courts and serve copies on all other parties at the time the requests are filed with the director.

(d) **Transcript Preparation; Advance Payment.** The transcript must be prepared and advance payment made under Rule 3.03.

(e) **Transmission.** On completion of the transcript, if any, the director promptly must transmit the record to the clerk of the appellate courts and send notice of the transmission — with a copy of the table of contents of the record — to the parties.

(f) **Appellant's Brief.** The brief of the appellant must be filed not later than 30 days after the date the record is transmitted to the appellate courts.

(g) **Rules Relating to Appellate Practice Apply.** The rules relating to appellate practice govern all other proceedings and matters in an appeal under K.S.A. 44-556 not provided for in this rule.

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