

## HOUSE BILL No. 2062

By Committee on Commerce, Labor and Economic Development

1-12

1 AN ACT concerning workers compensation; relating to alcohol and drug  
2 testing; employer credits for preexisting impairments and retirement;  
3 certain maximum rates; work disability claim threshold percentage;  
4 termination of employer's obligation; future medical benefits; claim  
5 notice requirements; dismissal for lack of prosecution; amending  
6 K.S.A. 2016 Supp. 44-501, 44-508, 44-510c, 44-510e, 44-510h, 44-  
7 510k, 44-520, 44-523 and 44-525 and repealing the existing sections.

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

10 Section 1. K.S.A. 2016 Supp. 44-501 is hereby amended to read as  
11 follows: 44-501. (a) (1) Compensation for an injury shall be disallowed  
12 if such injury to the employee results from:

- 13 (A) The employee's deliberate intention to cause such injury;  
14 (B) the employee's willful failure to use a guard or protection against  
15 accident or injury which is required pursuant to any statute and provided  
16 for the employee;  
17 (C) the employee's willful failure to use a reasonable and proper  
18 guard and protection voluntarily furnished the employee by the employer;  
19 (D) the employee's reckless violation of their employer's workplace  
20 safety rules or regulations; or  
21 (E) the employee's voluntary participation in fighting or horseplay  
22 with a co-employee for any reason, work related or otherwise.

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

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

36 (B) In the case of drugs or medications which are available to the

1 public without a prescription from a health care provider and prescription  
2 drugs or medications, compensation shall not be denied if the employee  
3 can show that such drugs or medications were being taken or used in  
4 therapeutic doses and there have been no prior incidences of the  
5 employee's impairment on the job as the result of the use of such drugs or  
6 medications within the previous 24 months.

7 (C) It shall be conclusively presumed that the employee was impaired  
8 due to alcohol or drugs if it is shown that, at the time of the injury, the  
9 employee had an alcohol concentration of 0.04 or more, or a GCMS  
10 confirmatory test by quantitative analysis showing a concentration at or  
11 above the levels shown on the following chart for the drugs of abuse listed:

|  | Confirmatory<br>test cutoff<br>levels (ng/ml) |
|--|---|
| 15 Marijuana metabolite <sup>1</sup> ..... | 15  |
| 16 Cocaine metabolite <sup>2</sup> .....   | 150   |
| 17 Opiates:                                |   |
| 18 Morphine .....                          | 2000  |
| 19 Codeine .....                           | 2000  |
| 20 6-Acetylmorphine <sup>4</sup> .....     | 10 ng/ml                                      |
| 21 Phencyclidine .....                     | 25  |
| 22 Amphetamines:                           |   |
| 23 Amphetamine .....                       | 500   |
| 24 Methamphetamine <sup>3</sup> .....      | 500   |

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

26 <sup>2</sup> Benzoyllecgonine.

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

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

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

35 (E) An employee's refusal to submit to a chemical test at the request  
36 of the employer shall ~~result in the forfeiture of benefits under the workers~~  
37 ~~compensation act if the employer had sufficient cause to suspect the use of~~  
38 ~~alcohol or drugs by the claimant or if the employer's policy clearly~~  
39 ~~authorizes post-injury testing~~ *not be admissible evidence to prove*  
40 *impairment, unless there is probable cause to believe that the employee*  
41 *used, possessed or was impaired by drugs or alcohol while working.*

42 (2) The results of a chemical test shall *not* be admissible evidence to  
43 prove impairment ~~if~~, *unless there was probable cause to believe that the*

1 *employee used, had possession of or was impaired by drugs or alcohol*  
2 *while working, and the employer establishes that the testing was done*  
3 *under any of the following circumstances:*

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

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

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

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

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

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

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

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

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

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

36 (E) the foundation evidence must establish, beyond a reasonable  
37 doubt, that the test results were from the sample taken from the employee;  
38 and

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

41 (c) (1) Except as provided in paragraph (2), compensation shall not  
42 be paid in case of coronary or coronary artery disease or cerebrovascular  
43 injury unless it is shown that the exertion of the work necessary to

1 precipitate the disability was more than the employee's usual work in the  
2 course of the employee's regular employment.

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

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

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

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

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

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

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

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

41 ~~(A) If the preexisting impairment is the result of injury sustained~~  
42 ~~while working for the employer against whom workers compensation~~  
43 ~~benefits are currently being sought, any award of compensation shall be~~

1 ~~reduced by the current dollar value attributable under the workers-~~  
2 ~~compensation act to the percentage of functional impairment determined to~~  
3 ~~be preexisting. The "current dollar value" shall be calculated by~~  
4 ~~multiplying the percentage of preexisting impairment by the compensation~~  
5 ~~rate in effect on the date of the accident or injury against which the~~  
6 ~~reduction will be applied.~~

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

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

26 Sec. 2. K.S.A. 2016 Supp. 44-508 is hereby amended to read as  
27 follows: 44-508. As used in the workers compensation act:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 diagnosed repetitive trauma;

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

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

8 (4) the last day ~~worked~~ *employed*, if the employee no longer ~~works~~  
9 ~~for~~ *is employed by* the employer against whom benefits are sought.

10 In no case shall the date of accident be later than the last date ~~worked~~  
11 *employed*.

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

41 (l) "Construction design professional" means any person who is an  
42 architect, professional engineer, landscape architect or land surveyor who  
43 has been issued a license by the state board of technical professions to

1 practice such technical profession in Kansas or any corporation organized  
2 to render professional services through the practice of one or more of such  
3 technical professions in Kansas under the professional corporation law of  
4 Kansas or any corporation issued a certificate of authorization under  
5 K.S.A. 74-7036, and amendments thereto, to practice one or more of such  
6 technical professions in Kansas.

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

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

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

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

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

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

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

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

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

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

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

17 Sec. 3. K.S.A. 2016 Supp. 44-510c is hereby amended to read as  
18 follows: 44-510c. Where death does not result from the injury,  
19 compensation shall be paid as provided in K.S.A. 44-510h and 44-510i,  
20 and amendments thereto, and as follows:

21 (a) (1) Where permanent total disability results from the injury,  
22 weekly payments shall be made during the period of permanent total  
23 disability in a sum equal to ~~66 2/3%~~ 100% of the average weekly wage of  
24 the injured employee, computed as provided in K.S.A. 44-511, and  
25 amendments thereto, but in no case less than \$25 per week nor more than  
26 the dollar amount nearest to 75% of the state's average weekly wage,  
27 determined as provided in K.S.A. 44-511, and amendments thereto, per  
28 week. The payment of compensation for permanent total disability shall  
29 continue for the duration of such disability, subject to review and  
30 modification as provided in K.S.A. 44-528, and amendments thereto.

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

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

38 (b) (1) Where temporary total disability results from the injury, no  
39 compensation shall be paid during the first week of disability, except that  
40 provided in K.S.A. 44-510h and 44-510i, and amendments thereto, unless  
41 the temporary total disability exists for three consecutive weeks, in which  
42 case compensation shall be paid for the first week of such disability.  
43 Thereafter weekly payments shall be made during such temporary total

1 disability, in a sum equal to  $66\frac{2}{3}\%$  of the average gross weekly wage of  
2 the injured employee, computed as provided in K.S.A. 44-511, and  
3 amendments thereto, but in no case less than \$25 per week nor more than  
4 the dollar amount nearest to 75% of the state's average weekly wage,  
5 determined as provided in K.S.A. 44-511, and amendments thereto, per  
6 week.

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

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

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

29 (3) Where no award has been entered, a return by the employee to  
30 any type of substantial and gainful employment shall suspend the  
31 employee's right to the payment of temporary total disability  
32 compensation, but shall not affect any right the employee may have to  
33 compensation for partial disability in accordance with K.S.A. 44-510d and  
34 44-510e, and amendments thereto.

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

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

41 Sec. 4. K.S.A. 2016 Supp. 44-510e is hereby amended to read as  
42 follows: 44-510e. (a) In case of whole body injury resulting in temporary  
43 or permanent partial general disability not covered by the schedule in

1 K.S.A. 44-510d, and amendments thereto, the employee shall receive  
2 weekly compensation as determined in this subsection during the period of  
3 temporary or permanent partial general disability not exceeding a  
4 maximum of 415 weeks.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

43 (F) The amount of compensation for whole body injury under this

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

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

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

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

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

41 (d) Where a minor employee or a minor employee's dependents are  
42 entitled to compensation under the workers compensation act, such  
43 compensation shall be exclusive of all other remedies or causes of action

1 for such injury or death, and no claim or cause of action against the  
2 employer shall inure or accrue to or exist in favor of the parent or parents  
3 of such minor employee on account of any damage resulting to such parent  
4 or parents on account of the loss of earnings or loss of service of such  
5 minor employee.

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

16 Sec. 5. K.S.A. 2016 Supp. 44-510h is hereby amended to read as  
17 follows: 44-510h. (a) It shall be the duty of the employer to provide the  
18 services of a health care provider, and such medical, surgical and hospital  
19 treatment, including nursing, medicines, medical and surgical supplies,  
20 ambulance, crutches, apparatus and transportation to and from the home of  
21 the injured employee to a place outside the community in which such  
22 employee resides, and within such community if the director, in the  
23 director's discretion, so orders, including transportation expenses  
24 computed in accordance with ~~subsection (a) of K.S.A. 44-515(a)~~, and  
25 amendments thereto, as may be reasonably necessary to cure and relieve  
26 the employee from the effects of the injury.

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

39 (2) Without application or approval, an employee may consult a  
40 health care provider of the employee's choice for the purpose of  
41 examination, diagnosis or treatment, but the employer shall only be liable  
42 for the fees and charges of such health care provider up to a total amount  
43 of \$500. The amount allowed for such examination, diagnosis or treatment



1 shall not be used to obtain a functional impairment rating. Any medical  
2 opinion obtained in violation of this prohibition shall not be admissible in  
3 any claim proceedings under the workers compensation act.

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

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

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

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

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

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

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

33 ~~(e) It is presumed that the employer's obligation to provide the~~  
34 ~~services of a health care provider, and such medical, surgical and hospital~~  
35 ~~treatment, including nursing, medicines, medical and surgical supplies,~~  
36 ~~ambulance, crutches, apparatus and transportation to and from the home of~~  
37 ~~the injured employee to a place outside the community in which such~~  
38 ~~employee resides, and within such community if the director, in the~~  
39 ~~director's discretion, so orders, including transportation expenses~~  
40 ~~computed in accordance with subsection (a) of K.S.A. 44-515, and~~  
41 ~~amendments thereto, shall terminate upon the employee reaching~~  
42 ~~maximum medical improvement. Such presumption may be overcome~~  
43 ~~with medical evidence that it is more probably true than not that additional~~

1 ~~medical treatment will be necessary after such time as the employee~~  
2 ~~reaches maximum medical improvement. The term "medical treatment" as~~  
3 ~~used in this subsection (e) means only that treatment provided or~~  
4 ~~prescribed by a licensed health care provider and shall not include home~~  
5 ~~exercise programs or over-the-counter medications.~~

6 Sec. 6. K.S.A. 2016 Supp. 44-510k is hereby amended to read as  
7 follows: 44-510k. (a) (1) At any time after the entry of an award for  
8 compensation ~~wherein future medical benefits were awarded~~, the  
9 employee, ~~employer or insurance carrier~~ may make application for a  
10 hearing, in such form as the director may require for the furnishing,  
11 ~~termination or modification~~ of medical treatment. Such post-award hearing  
12 shall be held by the assigned administrative law judge, in any county  
13 designated by the administrative law judge, and the judge shall conduct the  
14 hearing as provided in K.S.A. 44-523, and amendments thereto.

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

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

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

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

1 thereto. The parties shall meet and confer prior to the hearing pursuant to  
2 this section, but a prehearing settlement conference shall not be necessary.  
3 The administrative law judge shall have authority to award medical  
4 treatment relating back to the entry of the underlying award, but in no  
5 event shall such medical treatment relate back more than six months  
6 following the filing of such application for post-award medical treatment.  
7 Reviews taken under this section shall receive priority settings before the  
8 board, only superseded by reviews for preliminary hearings. A decision  
9 shall be rendered by the board within 30 days from the time the review  
10 hereunder is submitted.

11 (c) The administrative law judge may award attorney fees and costs  
12 on the claimant's behalf consistent with ~~subsection (g)~~ of K.S.A. 44-  
13 536(g), and amendments thereto. As used in this subsection, "costs"  
14 include, but are not limited to, witness fees, mileage allowances, any costs  
15 associated with reproduction of documents that become a part of the  
16 hearing record, the expense of making a record of the hearing and such  
17 other charges as are by statute authorized to be taxed as costs.

18 Sec. 7. K.S.A. 2016 Supp. 44-520 is hereby amended to read as  
19 follows: 44-520. (a) (1) Proceedings for compensation under the workers  
20 compensation act shall not be maintainable unless notice of injury by  
21 accident or repetitive trauma is given to the employer ~~by the earliest of the~~  
22 ~~following dates:~~

23 ~~(A) 20 30~~ calendar days from the date of accident or the date of  
24 injury by repetitive trauma;

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

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

32 Notice may be given orally or in writing.

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

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

43 (4) The notice, whether provided orally or in writing, shall include

1 the time, date, place, person injured and particulars of such injury. It must  
2 be apparent from the content of the notice that the employee is claiming  
3 benefits under the workers compensation act or has suffered a work-related  
4 injury.

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

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

13 Sec. 8. K.S.A. 2016 Supp. 44-523 is hereby amended to read as  
14 follows: 44-523. (a) The director, administrative law judge or board shall  
15 not be bound by technical rules of procedure, but shall give the parties  
16 reasonable opportunity to be heard and to present evidence, ensure the  
17 employee and the employer an expeditious hearing and act reasonably  
18 without partiality.

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

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

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

37 (3) on application for good cause shown.

38 (c) When all parties have submitted the case to an administrative law  
39 judge for an award, the administrative law judge shall issue an award  
40 within 30 days. The administrative law judge shall not stay a decision due  
41 to the absence of a submission letter. When the award is not entered in 30  
42 days, any party to the action may notify the director that an award is not  
43 entered and the director shall assign the matter to an assistant director or to

1 a special administrative law judge who shall enter an award forthwith  
2 based on the evidence in the record, or the director, on the director's own  
3 motion, may remove the case from the administrative law judge who has  
4 not entered an award within 30 days following submission by the party  
5 and assign it to an assistant director or to a special administrative law  
6 judge for immediate decision based on the evidence in the record.

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

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

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

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

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

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

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

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

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

42 (E) The party or party's attorney filing the affidavit has cause to  
43 believe and does believe that on account of the personal bias, prejudice or

1 interest of the administrative law judge such party cannot obtain a fair and  
2 impartial hearing. Such affidavit shall state the facts and the reasons for  
3 the belief that bias, prejudice or an interest exists.

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

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

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

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

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

3 Sec. 9. K.S.A. 2016 Supp. 44-525 is hereby amended to read as  
4 follows: 44-525. (a) Every finding or award of compensation shall be in  
5 writing, signed and acknowledged by the administrative law judge and  
6 shall specify the amount due and unpaid by the employer to the employee  
7 up to the date of the award, if any, and the amount of the payments  
8 thereafter to be paid by the employer to the employee, if any, and the  
9 length of time such payment shall continue. ~~No award shall include the~~  
10 ~~right to future medical treatment, unless it is proved by the claimant that it~~  
11 ~~is more probable than not that future medical treatment, as defined in~~  
12 ~~subsection (e) of K.S.A. 44-510h, and amendments thereto, will be~~  
13 ~~required as a result of the work-related injury.~~ The award of the  
14 administrative law judge shall be effective the day following the date  
15 noted in the award.

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

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

29 Sec. 10. K.S.A. 2016 Supp. 44-501, 44-508, 44-510c, 44-510e, 44-  
30 510h, 44-510k, 44-520, 44-523 and 44-525 are hereby repealed.

31 Sec. 11. This act shall take effect and be in force from and after its  
32 publication in the statute book.