

## SENATE BILL No. 73

By Committee on Commerce

1-24

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1 AN ACT concerning workers compensation, relating to administrative  
2 duties assumed by the secretary of health and environment; legal status  
3 requirements for compensation; administrative judge disqualification;  
4 limitation of actions; state workplace health and safety program;  
5 amending K.S.A. 44-512, 44-557 and 44-578 and K.S.A. 2012 Supp. 2-  
6 224a, 44-510d, 44-510e, 44-523, 44-532a, 44-575 and 44-577 and  
7 repealing the existing sections.  
8

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

10 Section 1. K.S.A. 2012 Supp. 2-224a is hereby amended to read as  
11 follows: 2-224a. (a) Notwithstanding the provisions of K.S.A. 44-576, and  
12 amendments thereto, the state fair board is hereby authorized to purchase  
13 workers compensation insurance from an admitted carrier. Any contract  
14 for the purchase of workers compensation insurance entered into by the  
15 state fair board shall be purchased in the manner prescribed for the  
16 purchase of supplies, materials, equipment and contractual services as  
17 provided in K.S.A. 75-3738 through 75-3744, and amendments thereto,  
18 and any such contract having a premium or rate in excess of \$500 shall be  
19 purchased on the basis of sealed bids. Such contract shall not be subject to  
20 the provisions of K.S.A. 75-4101 through 75-4114 and K.S.A. 2012 Supp.  
21 75-4125, and amendments thereto.

22 (b) If the state fair board enters into a contract for the purchase of  
23 workers compensation insurance as described in subsection (a), from and  
24 after the end of the payroll period in which such workers compensation  
25 policy takes effect, the state fair board shall not be subject to the self-  
26 insurance assessment prescribed by K.S.A. 44-576, and amendments  
27 thereto, and the director of accounts and reports shall cease to transfer any  
28 amounts for such self-assessment for the state fair board pursuant to such  
29 statute, except that any moneys paid relating to existing claims with the  
30 state workers compensation self-insurance fund made by the state fair  
31 board shall be assessed to the state fair board until all such claims have  
32 been closed and settled.

33 (c) Notwithstanding the provisions of K.S.A. 44-575, and  
34 amendments thereto, if the state fair board enters into a contract for the  
35 purchase of workers compensation insurance as described in subsection  
36 (a), the state workers compensation self-insurance fund shall not be liable

1 for any compensation claims under the workers compensation act relating  
2 to the state fair board and arising during the term of such contract, or for  
3 any other amounts otherwise required to be paid under the workers  
4 compensation act during the term of such contract.

5 (d) The state fair board shall notify ~~the secretary of administration~~  
6 ~~and~~ the secretary of health and environment of the effective date of any  
7 workers compensation policy acquired pursuant to this section.

8 Sec. 2. K.S.A. 2012 Supp. 44-510d is hereby amended to read as  
9 follows: 44-510d. (a) Where disability, partial in character but permanent  
10 in quality, results from the injury, the injured employee shall be entitled to  
11 the compensation provided in K.S.A. 44-510h and 44-510i, and  
12 amendments thereto. The injured employee may be entitled to payment of  
13 temporary total disability as defined in K.S.A. 44-510c, and amendments  
14 thereto, or temporary partial disability as defined in subsection (a)(1) of  
15 K.S.A. 44-510e, and amendments thereto, provided that the injured  
16 employee shall not be entitled to any other or further compensation for or  
17 during the first week following the injury unless such disability exists for  
18 three consecutive weeks, in which event compensation shall be paid for  
19 the first week. Thereafter compensation shall be paid for temporary total or  
20 temporary partial disability as provided in the following schedule,  $66\frac{2}{3}\%$   
21 of the average weekly wages to be computed as provided in K.S.A. 44-  
22 511, and amendments thereto, except that in no case shall the weekly  
23 compensation be more than the maximum as provided for in K.S.A. 44-  
24 510c, and amendments thereto.

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

- 29 (1) For loss of a thumb, 60 weeks.  
30 (2) For the loss of a first finger, commonly called the index finger, 37  
31 weeks.  
32 (3) For the loss of a second finger, 30 weeks.  
33 (4) For the loss of a third finger, 20 weeks.  
34 (5) For the loss of a fourth finger, commonly called the little finger,  
35 15 weeks.

36 (6) Loss of the first phalange of the thumb or of any finger shall be  
37 considered to be equal to the loss of  $\frac{1}{2}$  of such thumb or finger, and the  
38 compensation shall be  $\frac{1}{2}$  of the amount specified above. The loss of the  
39 first phalange and any part of the second phalange of any finger, which  
40 includes the loss of any part of the bone of such second phalange, shall be  
41 considered to be equal to the loss of  $\frac{2}{3}$  of such finger and the  
42 compensation shall be  $\frac{2}{3}$  of the amount specified above. The loss of the  
43 first phalange and any part of the second phalange of a thumb which

- 1 includes the loss of any part of the bone of such second phalange, shall be  
2 considered to be equal to the loss of the entire thumb. The loss of the first  
3 and second phalanges and any part of the third proximal phalange of any  
4 finger, shall be considered as the loss of the entire finger. Amputation  
5 through the joint shall be considered a loss to the next higher schedule.
- 6 (7) For the loss of a great toe, 30 weeks.
- 7 (8) For the loss of any toe other than the great toe, 10 weeks.
- 8 (9) The loss of the first phalange of any toe shall be considered to be  
9 equal to the loss of  $\frac{1}{2}$  of such toe and the compensation shall be  $\frac{1}{2}$  of the  
10 amount above specified.
- 11 (10) The loss of more than one phalange of a toe shall be considered  
12 to be equal to the loss of the entire toe.
- 13 (11) For the loss of a hand, 150 weeks.
- 14 (12) For the loss of a forearm, 200 weeks.
- 15 (13) For the loss of an arm, excluding the shoulder joint, shoulder  
16 girdle, shoulder musculature or any other shoulder structures, 210 weeks,  
17 and for the loss of an arm, including the shoulder joint, shoulder girdle,  
18 shoulder musculature or any other shoulder structures, 225 weeks.
- 19 (14) For the loss of a foot, 125 weeks.
- 20 (15) For the loss of a lower leg, 190 weeks.
- 21 (16) For the loss of a leg, 200 weeks.
- 22 (17) For the loss of an eye, or the complete loss of the sight thereof,  
23 120 weeks.
- 24 (18) Amputation or severance below the wrist shall be considered as  
25 the loss of a hand. Amputation at the wrist and below the elbow shall be  
26 considered as the loss of the forearm. Amputation at or above the elbow  
27 shall be considered loss of the arm. Amputation below the ankle shall be  
28 considered loss of the foot. Amputation at the ankle and below the knee  
29 shall be considered as loss of the lower leg. Amputation at or above the  
30 knee shall be considered as loss of the leg.
- 31 (19) For the complete loss of hearing of both ears, 110 weeks.
- 32 (20) For the complete loss of hearing of one ear, 30 weeks.
- 33 (21) Permanent loss of the use of a finger, thumb, hand, shoulder,  
34 arm, forearm, toe, foot, leg or lower leg or the permanent loss of the sight  
35 of an eye or the hearing of an ear, shall be equivalent to the loss thereof.  
36 For the permanent partial loss of the use of a finger, thumb, hand,  
37 shoulder, arm, toe, foot or leg, or the sight of an eye or the hearing of an  
38 ear, compensation shall be paid as provided for in K.S.A. 44-510c, and  
39 amendments thereto, per week during that proportion of the number of  
40 weeks in the foregoing schedule provided for the loss of such finger,  
41 thumb, hand, shoulder, arm, toe, foot or leg or the sight of an eye or the  
42 hearing of an ear, which partial loss thereof bears to the total loss of a  
43 finger, thumb, hand, shoulder, arm, toe, foot or leg, or the sight of an eye

1 or the hearing of an ear; but in no event shall the compensation payable  
2 hereunder for such partial loss exceed the compensation payable under the  
3 schedule for the total loss of such finger, thumb, hand, arm, toe, foot or  
4 leg, or the sight of an eye or the hearing of an ear, exclusive of the healing  
5 period. As used in this paragraph (21), "shoulder" means the shoulder  
6 joint, shoulder girdle, shoulder musculature or any other shoulder  
7 structures.

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

17 (23) Loss of or loss of use of a scheduled member shall be based  
18 upon permanent impairment of function to the scheduled member as  
19 determined using the ~~fourth~~ *sixth* edition of the American medical  
20 association guides to the evaluation of permanent impairment, if the  
21 impairment is contained therein.

22 (24) Where an injury results in the loss of or loss of use of more than  
23 one scheduled member within a single extremity, the functional  
24 impairment attributable to each scheduled member shall be combined  
25 pursuant to the ~~fourth~~ *sixth* edition of the American medical association  
26 guides for evaluation of permanent impairment and compensation awarded  
27 shall be calculated to the highest scheduled member actually impaired.

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

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

42 (1) Payment rate shall be the lesser of: (A) The amount determined  
43 by multiplying the average weekly wage of the worker prior to such injury

1 by  $66\frac{2}{3}\%$ ; or (B) the maximum provided in K.S.A. 44-510c, and  
2 amendments thereto;

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

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

16 Sec. 3. K.S.A. 2012 Supp. 44-510e is hereby amended to read as  
17 follows: 44-510e. (a) In case of whole body injury resulting in temporary  
18 or permanent partial general disability not covered by the schedule in  
19 K.S.A. 44-510d, and amendments thereto, the employee shall receive  
20 weekly compensation as determined in this subsection during the period of  
21 temporary or permanent partial general disability not exceeding a  
22 maximum of 415 weeks.

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

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

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

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

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

42 (B) The extent of permanent partial general disability shall be the  
43 percentage of functional impairment the employee sustained on account of

1 the injury as established by competent medical evidence and based on the  
2 ~~fourth~~ *sixth* edition of the American medical association guides to the  
3 evaluation of permanent impairment, if the impairment is contained  
4 therein.

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

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

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

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

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

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

1 evidence.

2 (i) To establish post-injury wage loss, the employee must have the  
3 legal capacity to enter into a valid contract of employment. *If an employee*  
4 *is neither a United States citizen nor authorized to work in the United*  
5 *States, it is conclusively presumed that the employee has no wage loss.*  
6 Wage loss caused by voluntary resignation or termination for cause shall in  
7 no way be construed to be caused by the injury.

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

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

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

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

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

1 total or temporary partial disability.

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

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

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

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

33 Sec. 4. K.S.A. 44-512 is hereby amended to read as follows: 44-512.  
34 Workers compensation payments shall be made at the same time, place and  
35 in the same manner as the wages of the worker were payable at the time of  
36 the accident, but upon the application of either party the administrative law  
37 judge may modify such requirements in a particular case as the  
38 administrative law judge deems just, except that: (a) Payments from the  
39 workers compensation fund established by K.S.A. 44-566a, and  
40 amendments thereto, shall be made in the manner approved by the  
41 commissioner of insurance; (b) payments from the state workers  
42 compensation self-insurance fund established by K.S.A. 44-575, and  
43 amendments thereto, shall be made in a manner approved by the secretary



1 of ~~administration~~ *health and environment*; and (c) whenever temporary  
2 total disability compensation is to be paid under the workers compensation  
3 act, payments shall be made only in cash, by check or in the same manner  
4 that the employee is normally compensated for salary or wages and not by  
5 any other means, except that any such compensation may be paid by  
6 warrant of the director of accounts and reports issued for payment of such  
7 compensation from the workers compensation fund or the state workers  
8 compensation self-insurance fund under the workers compensation act.

9 Sec. 5. K.S.A. 2012 Supp. 44-523 is hereby amended to read as  
10 follows: 44-523. (a) The director, administrative law judge or board shall  
11 not be bound by technical rules of procedure, but shall give the parties  
12 reasonable opportunity to be heard and to present evidence, ~~insure~~ *ensure*  
13 the employee and the employer an expeditious hearing and act reasonably  
14 without partiality.

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

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

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

33 (3) on application for good cause shown.

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

1 and assign it to an assistant director or to a special administrative law  
2 judge for immediate decision based on the evidence in the record.

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

9 (e) (1) If a party or a party's attorney believes that the administrative  
10 law judge to whom a case is assigned cannot afford that party a fair  
11 hearing in the case, the party or attorney may file a motion for change of  
12 administrative law judge. A party or a party's attorney shall not file more  
13 than one motion for change of administrative law judge in a case. The  
14 administrative law judge shall promptly hear the motion informally upon  
15 reasonable notice to all parties who have appeared in the case.  
16 Notwithstanding the provisions of K.S.A. 44-552, and amendments  
17 thereto, the administrative law judge shall decide, in the administrative law  
18 judge's discretion, whether or not the hearing of such motion shall be taken  
19 down by a certified shorthand reporter. If the administrative law judge  
20 disqualifies the administrative law judge's self, the case shall be assigned  
21 to another administrative law judge by the director. If the administrative  
22 law judge refuses to disqualify the administrative law judge's self, the  
23 party seeking a change of administrative law judge may, *within 10 days of*  
24 *the refusal, file in the district court of the county in which the accident or*  
25 *injury occurred the affidavit provided in subsection (e)(2). If an affidavit is*  
26 *to be filed in the district court, it shall be filed within 10 days an appeal*  
27 *with the workers compensation board.*

28 (2) ~~If a party or a party's attorney files an affidavit alleging any of the~~  
29 ~~grounds specified in subsection (e)(3), the chief judge shall at once~~  
30 ~~determine, or refer the affidavit to another district court judge for prompt~~  
31 ~~determination of, the legal sufficiency of the affidavit. If the affidavit is~~  
32 ~~filed in a district court in which there is no other judge who is qualified to~~  
33 ~~hear the matter, the chief judge shall at once notify the departmental justicee~~  
34 ~~for the district and request the appointment of another district judge to~~  
35 ~~determining the legal sufficiency of the affidavit. If the affidavit is found~~  
36 ~~to be legally sufficient, the district court judge shall order the director to~~  
37 ~~assign the case to another administrative law judge or to an assistant~~  
38 ~~director. The party or a party's attorney shall file with the workers~~  
39 ~~compensation board an affidavit alleging one or more of the grounds~~  
40 ~~specified in subsection (e).~~

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

1       ~~(3)~~ (4) Grounds which may be alleged as provided in subsection (e)  
2 (2) for change of administrative law judge are that:

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

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

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

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

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

13       ~~(4)~~ (5) In any affidavit filed pursuant to subsection (e)(2), the recital  
14 of previous rulings or decisions by the administrative law judge on legal  
15 issues or concerning prior motions for change of administrative law judge  
16 filed by counsel or such counsel's law firm, pursuant to this subsection,  
17 shall not be deemed legally sufficient for any ~~believe~~ belief that bias or  
18 prejudice exists.

19       (6) *A determination by the workers compensation board as to the*  
20 *legal sufficiency of the affidavit for recusal submitted above shall be*  
21 *appealable to the court of appeals under the provision of K.S.A. 44-556,*  
22 *and amendments thereto.*

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

40       (2) In any claim which has not proceeded to regular hearing within  
41 one year from the date of a preliminary award denying compensability of  
42 the claim, the employer shall be permitted to file with the division an  
43 application for dismissal based on lack of prosecution. The matter shall be

1 set for hearing with notice to the claimant's attorney, if the claimant is  
2 represented, or to the claimant's last known address. Unless the claimant  
3 can prove a good faith reason for delay, the claim shall be dismissed with  
4 prejudice by the administrative law judge. Such dismissal shall be  
5 considered a final disposition at a full hearing on the claim for purposes of  
6 employer reimbursement from the fund pursuant to subsection (b) of  
7 K.S.A. 44-534a, and amendments thereto.

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

10 Sec. 6. K.S.A. 2012 Supp. 44-532a is hereby amended to read as  
11 follows: 44-532a. (a) If an employer has no insurance *or has an*  
12 *insufficient self-insurance bond or letter of credit* to secure the payment of  
13 compensation ~~or has insufficiently funded a self-insurance bond~~, as  
14 provided in subsection (b)(1) and (2) of K.S.A. 44-532, and amendments  
15 thereto, and such employer is financially unable to pay compensation to an  
16 injured worker as required by the workers compensation act, or such  
17 employer cannot be located and required to pay such compensation, the  
18 injured worker may apply to the director for an award of the compensation  
19 benefits, including medical compensation, to which such injured worker is  
20 entitled, to be paid from the workers compensation fund. Whenever a  
21 worker files an application under this section, the matter shall be assigned  
22 to an administrative law judge for hearing. If the administrative law judge  
23 is satisfied as to the existence of the conditions prescribed by this section,  
24 the administrative law judge may make an award, or modify an existing  
25 award, and prescribe the payments to be made from the workers  
26 compensation fund as provided in K.S.A. 44-569, and amendments  
27 thereto. The award shall be certified to the commissioner of insurance, and  
28 upon receipt thereof, the commissioner of insurance shall cause payment  
29 to be made to the worker in accordance therewith.

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

36 Sec. 7. K.S.A. 44-557 is hereby amended to read as follows: 44-557.

37 (a) It is hereby made the duty of every employer to make or cause to be  
38 made a report to the director of any accident, or claimed or alleged  
39 accident, to any employee which occurs in the course of the employee's  
40 employment and of which the employer or the employer's supervisor has  
41 knowledge, which report shall be made upon a form to be prepared by the  
42 director, within 28 days, after the receipt of such knowledge, if the  
43 personal injuries which are sustained by such accidents, are sufficient

1 wholly or partially to incapacitate the person injured from labor or service  
2 for more than the remainder of the day, shift or turn on which such injuries  
3 were sustained.

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

11 ~~(e) No limitation of time in the workers compensation act shall begin  
12 to run unless a report of the accident as provided in this section has been  
13 filed at the office of the director if the injured employee has given notice  
14 of accident as provided by K.S.A. 44-520 and amendments thereto, except  
15 that any proceeding for compensation for any such injury or death, where  
16 report of the accident has not been filed, must be commenced by serving  
17 upon the employer a written claim pursuant to K.S.A. 44-520a and  
18 amendments thereto within one year from the date of the accident,  
19 suspension of payment of disability compensation, the date of the last  
20 medical treatment authorized by the employer, or the death of such  
21 employee referred to in K.S.A. 44-520a and amendments thereto.~~

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

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

35 Sec. 8. K.S.A. 2012 Supp. 44-575 is hereby amended to read as  
36 follows: 44-575. (a) As used in K.S.A. 44-575 through 44-580, and  
37 amendments thereto, "state agency" means the state, or any department or  
38 agency of the state, but not including the Kansas turnpike authority, the  
39 university of Kansas hospital authority, any political subdivision of the  
40 state or the district court with regard to district court officers or employees  
41 whose total salary is payable by counties.

42 (b) For the purposes of providing for the payment of compensation  
43 for claims arising on and after July 1, 1974, and all other amounts required

1 to be paid by any state agency as a self-insured employer under the  
2 workers compensation act and any amendments or additions thereto, there  
3 is hereby established the state workers compensation self-insurance fund  
4 in the state treasury. The name of the state workmen's compensation self-  
5 insurance fund is hereby changed to the state workers compensation self-  
6 insurance fund. Whenever the state workmen's compensation self-  
7 insurance fund is referred to or designated by any statute, contract or other  
8 document, such reference or designation shall be deemed to apply to the  
9 state workers compensation self-insurance fund.

10 (c) The state workers compensation self-insurance fund shall be liable  
11 to pay: (1) All compensation for claims arising on and after July 1, 1974,  
12 and all other amounts required to be paid by any state agency as a self-  
13 insured employer under the workers compensation act and any  
14 amendments or additions thereto; (2) the amount that all state agencies are  
15 liable to pay of the "carrier's share of expense" of the administration of the  
16 office of the director of workers' compensation as provided in K.S.A. 74-  
17 712 through 74-719, and amendments thereto, for each fiscal year; (3) all  
18 compensation for claims remaining from the self-insurance program which  
19 existed prior to July 1, 1974, for institutional employees of the division of  
20 mental health and retardation services of the department of social and  
21 rehabilitation services; (4) the cost of administering the state workers  
22 compensation self-insurance fund including the defense of such fund and  
23 any costs assessed to such fund in any proceeding to which it is a party;  
24 and (5) the cost of establishing and operating the state workplace health  
25 and safety program under subsection (f). For the purposes of K.S.A. 44-  
26 575 through 44-580, and amendments thereto, all state agencies are hereby  
27 deemed to be a single employer whose liabilities specified in this section  
28 are hereby imposed solely upon the state workers compensation self-  
29 insurance fund and such employer is hereby declared to be a fully  
30 authorized and qualified self-insurer under K.S.A. 44-532, and  
31 amendments thereto, but such employer shall not be required to make any  
32 reports thereunder.

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

1 such payments.

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

9 (f) There is hereby established the state workplace health and safety  
10 program within the state workers compensation self-insurance program of  
11 the department of ~~administration~~ *health and environment*. The secretary of  
12 ~~administration~~ *health and environment* shall implement and ~~administer~~ *the*  
13 *division of industrial health and safety of the Kansas department of labor*  
14 *shall assist in administering* the state workplace health and safety program  
15 for state agencies. The state workplace health and safety program shall  
16 include, but not be limited to:

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

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

21 (3) procedures for identifying and controlling workplace hazards;

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

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

26 Sec. 9. K.S.A. 2012 Supp. 44-577 is hereby amended to read as  
27 follows: 44-577. (a) All claims for compensation under the workers  
28 compensation act against any state agency for claims arising on and after  
29 July 1, 1974, and claims for compensation remaining from the self-  
30 insurance program which existed prior to July 1, 1974, for institutional  
31 employees of the division of mental health and retardation services of the  
32 department of social and rehabilitation services shall be made against the  
33 state workers compensation self-insurance fund. Such claims shall be  
34 served upon the secretary of ~~administration~~ *health and environment* in the  
35 secretary's capacity as administrator of the state workers compensation  
36 self-insurance fund in the manner provided for claims against other  
37 employers under the workers compensation act. The chief attorney for the  
38 department of ~~administration~~ *health and environment*, or another attorney  
39 of the department of ~~administration~~ *health and environment* designated by  
40 the chief attorney, shall represent and defend the state workers  
41 compensation self-insurance fund in all proceedings under the workers  
42 compensation act.

43 (b) The secretary of ~~administration~~ *health and environment* shall

1 investigate, or cause to be investigated, each claim for compensation  
2 against the state workers compensation self-insurance fund. For the  
3 purposes of such investigations, the secretary of ~~administration~~ *health and*  
4 *environment* is authorized to obtain expert medical advice regarding the  
5 injuries, occupational diseases and disabilities involved in such claims. If,  
6 based upon such investigation and any other available information, the  
7 secretary of ~~administration~~ *health and environment* finds that there is no  
8 material dispute as to any issue involved in the claim, that the claim is  
9 valid and that the claim should be settled by agreement, the secretary of  
10 ~~administration~~ *health and environment* may proceed to enter into such an  
11 agreement with the claimant, for the state workers compensation self-  
12 insurance fund. Any such agreement may provide for lump-sum  
13 settlements subject to approval by the director and all such agreements  
14 shall be filed in the office of the director for approval as provided in  
15 K.S.A. 44-527, and amendments thereto. All other claims for  
16 compensation against such fund shall be paid in accordance with the  
17 workers compensation act pursuant to final awards or orders of an  
18 administrative law judge or the board or pursuant to orders and findings of  
19 the director under the workers compensation act.

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

27 Sec. 10. K.S.A. 44-578 is hereby amended to read as follows: 44-578.  
28 The secretary of ~~administration~~ *health and environment* may adopt rules  
29 and regulations necessary for the administration of the state workers  
30 compensation self-insurance fund, including the processing and settling of  
31 claims for compensation made against such fund. Such rules and  
32 regulations shall be subject to the provisions of K.S.A. 75-3706, and  
33 amendments thereto, and shall be adopted in accordance therewith.

34 Sec. 11. K.S.A. 44-512, 44-557 and 44-578 and K.S.A. 2012 Supp. 2-  
35 224a, 44-510d, 44-510e, 44-523, 44-532a, 44-575 and 44-577 are hereby  
36 repealed.

37 Sec. 12. This act shall take effect and be in force from and after its  
38 publication in the statute book.