

As Amended by House Committee

As Amended by Senate Committee

Session of 2013

SENATE BILL No. 73

By Committee on Commerce

1-24

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 **notice of injury requirements**; limitation of actions; state workplace  
5 health and safety program; amending K.S.A. 44-512, 44-557 and 44-  
6 578 and K.S.A. 2012 Supp. 2-224a, 44-510d, 44-510e, **44-520**, 44-523,  
7 44-532a, 44-575 and 44-577 and 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

1 purchase of workers compensation insurance as described in subsection  
2 (a), the state workers compensation self-insurance fund shall not be liable  
3 for any compensation claims under the workers compensation act relating  
4 to the state fair board and arising during the term of such contract, or for  
5 any other amounts otherwise required to be paid under the workers  
6 compensation act during the term of such contract.

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

10 Sec. 2. K.S.A. 2012 Supp. 44-510d is hereby amended to read as  
11 follows: 44-510d. (a) Where disability, partial in character but permanent  
12 in quality, results from the injury, the injured employee shall be entitled to  
13 the compensation provided in K.S.A. 44-510h and 44-510i, and  
14 amendments thereto. The injured employee may be entitled to payment of  
15 temporary total disability as defined in K.S.A. 44-510c, and amendments  
16 thereto, or temporary partial disability as defined in subsection (a)(1) of  
17 K.S.A. 44-510e, and amendments thereto, provided that the injured  
18 employee shall not be entitled to any other or further compensation for or  
19 during the first week following the injury unless such disability exists for  
20 three consecutive weeks, in which event compensation shall be paid for  
21 the first week. Thereafter compensation shall be paid for temporary total or  
22 temporary partial disability as provided in the following schedule, 66<sup>2</sup>/<sub>3</sub>%  
23 of the average weekly wages to be computed as provided in K.S.A. 44-  
24 511, and amendments thereto, except that in no case shall the weekly  
25 compensation be more than the maximum as provided for in K.S.A. 44-  
26 510c, and amendments thereto.

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

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

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

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

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

36 (5) For the loss of a fourth finger, commonly called the little finger,  
37 15 weeks.

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

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

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

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

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

28 (24) Where an injury results in the loss of or loss of use of more than  
29 one scheduled member within a single extremity, the functional  
30 impairment attributable to each scheduled member shall be combined  
31 pursuant to the ~~fourth~~ ~~sixth~~ **fourth** edition of the American medical  
32 association guides for evaluation of permanent impairment *until January*  
33 *1, 2015, but for injuries occurring on and after January 1, 2015, shall be*  
34 *combined pursuant to the sixth edition of the American medical*  
35 *association guides to the evaluation of permanent impairment,* and  
36 compensation awarded shall be calculated to the highest scheduled  
37 member actually impaired.

38 (c) Whenever the employee is entitled to compensation for a specific  
39 injury under the foregoing schedule, the same shall be exclusive of all  
40 other compensation except the benefits provided in K.S.A. 44-510h and  
41 44-510i, and amendments thereto, and no additional compensation shall be  
42 allowable or payable for any temporary or permanent, partial or total  
43 disability, except that the director, in proper cases, may allow additional

1 compensation during the actual healing period, following amputation. The  
2 healing period shall not be more than 10% of the total period allowed for  
3 the scheduled injury in question nor in any event for longer than 15 weeks.  
4 The return of the employee to the employee's usual occupation shall  
5 terminate the healing period.

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

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

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

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

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

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

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

1 results in:

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

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

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

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

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

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

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

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

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

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

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

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

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

30 (F) The amount of compensation for whole body injury under this  
31 section shall be determined by multiplying the payment rate by the weeks  
32 payable. As used in this section: (1) The payment rate shall be the lesser  
33 of: (A) The amount determined by multiplying the average weekly wage  
34 of the worker prior to such injury by 66<sup>2</sup>/<sub>3</sub>%; or (B) the maximum provided  
35 in K.S.A. 44-510c, and amendments thereto; (2) weeks payable shall be  
36 determined as follows: (A) Determine the weeks of temporary  
37 compensation paid by adding the amounts of temporary total and  
38 temporary partial disability compensation paid and dividing the sum by the  
39 payment rate above; (B) subtract from 415 weeks the total number of  
40 weeks of temporary compensation paid as determined in (F)(2)(A),  
41 excluding the first 15 such weeks; and (3) multiply the number of weeks  
42 as determined in (F)(2)(B) by the percentage of functional impairment  
43 pursuant to subsection (a)(2)(B) or the percentage of work disability

1 pursuant to subsection (a)(2)(C), whichever is applicable.

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

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

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

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

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

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



1 employee or on any other account resulting from or growing out of the  
2 injury or death of such employee.

3 Sec. 4. K.S.A. 44-512 is hereby amended to read as follows: 44-512.  
4 Workers compensation payments shall be made at the same time, place and  
5 in the same manner as the wages of the worker were payable at the time of  
6 the accident, but upon the application of either party the administrative law  
7 judge may modify such requirements in a particular case as the  
8 administrative law judge deems just, except that: (a) Payments from the  
9 workers compensation fund established by K.S.A. 44-566a, and  
10 amendments thereto, shall be made in the manner approved by the  
11 commissioner of insurance; (b) payments from the state workers  
12 compensation self-insurance fund established by K.S.A. 44-575, and  
13 amendments thereto, shall be made in a manner approved by the secretary  
14 of ~~administration~~ *health and environment*; and (c) whenever temporary  
15 total disability compensation is to be paid under the workers compensation  
16 act, payments shall be made only in cash, by check or in the same manner  
17 that the employee is normally compensated for salary or wages and not by  
18 any other means, except that any such compensation may be paid by  
19 warrant of the director of accounts and reports issued for payment of such  
20 compensation from the workers compensation fund or the state workers  
21 compensation self-insurance fund under the workers compensation act.

22 ***Sec. 5. K.S.A. 2012 Supp. 44-520 is hereby amended to read as***  
23 ***follows: 44-520. (a) (1) Proceedings for compensation under the workers***  
24 ***compensation act shall not be maintainable unless notice of injury by***  
25 ***accident or repetitive trauma is given to the employer by the earliest of***  
26 ***the following dates:***

27 ***(A) ~~30~~ 20 calendar days from the date of accident or the date of***  
28 ***injury by repetitive trauma;***

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

33 ***(C) if the employee no longer works for the employer against whom***  
34 ***benefits are being sought, 20 10 calendar days after the employee's last***  
35 ***day of actual work for the employer.***

36 ***Notice may be given orally or in writing.***

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

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

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

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

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

19       Sec.-5- 6. K.S.A. 2012 Supp. 44-523 is hereby amended to read as  
20 follows: 44-523. (a) The director, administrative law judge or board shall  
21 not be bound by technical rules of procedure, but shall give the parties  
22 reasonable opportunity to be heard and to present evidence, ~~insure~~ ensure  
23 the employee and the employer an expeditious hearing and act reasonably  
24 without partiality.

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

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

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

43       (3) on application for good cause shown.

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

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

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

38 (2) ~~If a party or a party's attorney files an affidavit alleging any of the~~  
39 ~~grounds specified in subsection (e)(3), the chief judge shall at once~~  
40 ~~determine, or refer the affidavit to another district court judge for prompt~~  
41 ~~determination of, the legal sufficiency of the affidavit. If the affidavit is~~  
42 ~~filed in a district court in which there is no other judge who is qualified to~~  
43 ~~hear the matter, the chief judge shall at once notify the departmental justice~~

1 ~~for the district and request the appointment of another district judge to~~  
 2 ~~determining the legal sufficiency of the affidavit. If the affidavit is found~~  
 3 ~~to be legally sufficient, the district court judge shall order the director to~~  
 4 ~~assign the case to another administrative law judge or to an assistant~~  
 5 ~~director~~ *The party or a party's attorney shall file with the workers*  
 6 *compensation board an affidavit alleging one or more of the grounds*  
 7 *specified in subsection (e).*

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

11 ~~(3) (4)~~ Grounds which may be alleged as provided in subsection (e)  
 12 (2) for change of administrative law judge are that:

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

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

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

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

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

23 ~~(4) (5)~~ In any affidavit filed pursuant to subsection (e)(2), the recital  
 24 of previous rulings or decisions by the administrative law judge on legal  
 25 issues or concerning prior motions for change of administrative law judge  
 26 filed by counsel or such counsel's law firm, pursuant to this subsection,  
 27 shall not be deemed legally sufficient for any ~~believe~~ *belief* that bias or  
 28 prejudice exists.

29 ~~(6) A determination by the workers compensation board as to the~~  
 30 ~~legal sufficiency of the affidavit for recusal submitted above shall be~~  
 31 ~~appealable to the court of appeals under the provision of K.S.A. 44-556,~~  
 32 ~~and amendments thereto. Notwithstanding the provisions of K.S.A. 44-~~  
 33 ~~556, and amendments thereto, no interlocutory appeal to the court of~~  
 34 ~~appeals of the workers compensation appeals board's decision~~  
 35 ~~regarding recusal shall be allowed while the resolution of the claim for~~  
 36 ~~compensation is pending before an administrative law judge or the~~  
 37 ~~workers compensation appeals board~~

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

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

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

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

25 ~~Sec. 7.~~ K.S.A. 2012 Supp. 44-532a is hereby amended to read as  
26 follows: 44-532a. (a) If an employer has no insurance *or has an*  
27 *insufficient self-insurance bond or letter of credit* to secure the payment of  
28 compensation ~~or has insufficiently funded a self-insurance bond~~, as  
29 provided in subsection (b)(1) and (2) of K.S.A. 44-532, and amendments  
30 thereto, and such employer is financially unable to pay compensation to an  
31 injured worker as required by the workers compensation act, or such  
32 employer cannot be located and required to pay such compensation, the  
33 injured worker may apply to the director for an award of the compensation  
34 benefits, including medical compensation, to which such injured worker is  
35 entitled, to be paid from the workers compensation fund. Whenever a  
36 worker files an application under this section, the matter shall be assigned  
37 to an administrative law judge for hearing. If the administrative law judge  
38 is satisfied as to the existence of the conditions prescribed by this section,  
39 the administrative law judge may make an award, or modify an existing  
40 award, and prescribe the payments to be made from the workers  
41 compensation fund as provided in K.S.A. 44-569, and amendments  
42 thereto. The award shall be certified to the commissioner of insurance, and  
43 upon receipt thereof, the commissioner of insurance shall cause payment

1 to be made to the worker in accordance therewith.

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

8 Sec. ~~7.~~ **8.** K.S.A. 44-557 is hereby amended to read as follows: 44-  
9 557. (a) It is hereby made the duty of every employer to make or cause to  
10 be made a report to the director of any accident, or claimed or alleged  
11 accident, to any employee which occurs in the course of the employee's  
12 employment and of which the employer or the employer's supervisor has  
13 knowledge, which report shall be made upon a form to be prepared by the  
14 director, within 28 days, after the receipt of such knowledge, if the  
15 personal injuries which are sustained by such accidents, are sufficient  
16 wholly or partially to incapacitate the person injured from labor or service  
17 for more than the remainder of the day, shift or turn on which such injuries  
18 were sustained.

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

26 ~~(c) No limitation of time in the workers compensation act shall begin  
27 to run unless a report of the accident as provided in this section has been  
28 filed at the office of the director if the injured employee has given notice  
29 of accident as provided by K.S.A. 44-520 and amendments thereto, except  
30 that any proceeding for compensation for any such injury or death, where  
31 report of the accident has not been filed, must be commenced by serving  
32 upon the employer a written claim pursuant to K.S.A. 44-520a and  
33 amendments thereto within one year from the date of the accident,  
34 suspension of payment of disability compensation, the date of the last  
35 medical treatment authorized by the employer, or the death of such  
36 employee referred to in K.S.A. 44-520a and amendments thereto.~~

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

40 ~~(e)~~ (d) Any civil penalty imposed by this section shall be recovered,  
41 by the assistant attorney general upon information received from the  
42 director, by issuing and serving upon such employer a summary order or  
43 statement of the charges with respect thereto and a hearing shall be

1 conducted thereon in accordance with the provisions of the Kansas  
2 administrative procedure act, except that, at the discretion of the director,  
3 such civil penalties may be assessed as costs in a workers compensation  
4 proceeding by an administrative law judge upon a showing by the assistant  
5 attorney general that a required report was not filed which pertains to a  
6 claim pending before the administrative law judge.

7 Sec.—8: 9. K.S.A. 2012 Supp. 44-575 is hereby amended to read as  
8 follows: 44-575. (a) As used in K.S.A. 44-575 through 44-580, and  
9 amendments thereto, "state agency" means the state, or any department or  
10 agency of the state, but not including the Kansas turnpike authority, the  
11 university of Kansas hospital authority, any political subdivision of the  
12 state or the district court with regard to district court officers or employees  
13 whose total salary is payable by counties.

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

25 (c) The state workers compensation self-insurance fund shall be liable  
26 to pay: (1) All compensation for claims arising on and after July 1, 1974,  
27 and all other amounts required to be paid by any state agency as a self-  
28 insured employer under the workers compensation act and any  
29 amendments or additions thereto; (2) the amount that all state agencies are  
30 liable to pay of the "carrier's share of expense" of the administration of the  
31 office of the director of workers' compensation as provided in K.S.A. 74-  
32 712 through 74-719, and amendments thereto, for each fiscal year; (3) all  
33 compensation for claims remaining from the self-insurance program which  
34 existed prior to July 1, 1974, for institutional employees of the division of  
35 mental health and retardation services of the department of social and  
36 rehabilitation services; (4) the cost of administering the state workers  
37 compensation self-insurance fund including the defense of such fund and  
38 any costs assessed to such fund in any proceeding to which it is a party;  
39 and (5) the cost of establishing and operating the state workplace health  
40 and safety program under subsection (f). For the purposes of K.S.A. 44-  
41 575 through 44-580, and amendments thereto, all state agencies are hereby  
42 deemed to be a single employer whose liabilities specified in this section  
43 are hereby imposed solely upon the state workers compensation self-

1 insurance fund and such employer is hereby declared to be a fully  
2 authorized and qualified self-insurer under K.S.A. 44-532, and  
3 amendments thereto, but such employer shall not be required to make any  
4 reports thereunder.

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

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

24 (f) There is hereby established the state workplace health and safety  
25 program within the state workers compensation self-insurance program of  
26 the department of ~~administration~~ *health and environment*. The secretary of  
27 ~~administration~~ *health and environment* shall implement and ~~administer~~ *the*  
28 *division of industrial health and safety of the Kansas department of labor*  
29 *shall assist in administering* the state workplace health and safety program  
30 for state agencies. The state workplace health and safety program shall  
31 include, but not be limited to:

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

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

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

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

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

41 Sec. ~~9~~ **10**. K.S.A. 2012 Supp. 44-577 is hereby amended to read as  
42 follows: 44-577. (a) All claims for compensation under the workers  
43 compensation act against any state agency for claims arising on and after



1 July 1, 1974, and claims for compensation remaining from the self-  
2 insurance program which existed prior to July 1, 1974, for institutional  
3 employees of the division of mental health and retardation services of the  
4 department of social and rehabilitation services shall be made against the  
5 state workers compensation self-insurance fund. Such claims shall be  
6 served upon the secretary of ~~administration~~ *health and environment* in the  
7 secretary's capacity as administrator of the state workers compensation  
8 self-insurance fund in the manner provided for claims against other  
9 employers under the workers compensation act. The chief attorney for the  
10 department of ~~administration~~ *health and environment*, or another attorney  
11 of the department of ~~administration~~ *health and environment* designated by  
12 the chief attorney, shall represent and defend the state workers  
13 compensation self-insurance fund in all proceedings under the workers  
14 compensation act.

15 (b) The secretary of ~~administration~~ *health and environment* shall  
16 investigate, or cause to be investigated, each claim for compensation  
17 against the state workers compensation self-insurance fund. For the  
18 purposes of such investigations, the secretary of ~~administration~~ *health and*  
19 *environment* is authorized to obtain expert medical advice regarding the  
20 injuries, occupational diseases and disabilities involved in such claims. If,  
21 based upon such investigation and any other available information, the  
22 secretary of ~~administration~~ *health and environment* finds that there is no  
23 material dispute as to any issue involved in the claim, that the claim is  
24 valid and that the claim should be settled by agreement, the secretary of  
25 ~~administration~~ *health and environment* may proceed to enter into such an  
26 agreement with the claimant, for the state workers compensation self-  
27 insurance fund. Any such agreement may provide for lump-sum  
28 settlements subject to approval by the director and all such agreements  
29 shall be filed in the office of the director for approval as provided in  
30 K.S.A. 44-527, and amendments thereto. All other claims for  
31 compensation against such fund shall be paid in accordance with the  
32 workers compensation act pursuant to final awards or orders of an  
33 administrative law judge or the board or pursuant to orders and findings of  
34 the director under the workers compensation act.

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

42 Sec. ~~10.~~ **II.** K.S.A. 44-578 is hereby amended to read as follows: 44-  
43 578. The secretary of ~~administration~~ *health and environment* may adopt

1 rules and regulations necessary for the administration of the state workers  
2 compensation self-insurance fund, including the processing and settling of  
3 claims for compensation made against such fund. ~~Such rules and~~  
4 ~~regulations shall be subject to the provisions of K.S.A. 75-3706, and~~  
5 ~~amendments thereto, and shall be adopted in accordance therewith.~~

6 Sec. ~~11~~. **12.** K.S.A. 44-512, 44-557 and 44-578 and K.S.A. 2012  
7 Supp. 2-224a, 44-510d, 44-510e, **44-520**, 44-523, 44-532a, 44-575 and 44-  
8 577 are hereby repealed.

9 Sec. ~~12~~. **13.** This act shall take effect and be in force from and after  
10 its publication in the statute book.