

HOUSE BILL No. 2340

By Representative Swenson

2-6

AN ACT concerning workers compensation; relating to payment of benefits and premiums thereunder; amending K.S.A. 44-501, 44-510h and 44-532 and repealing the existing sections.

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

Section 1. K.S.A. 44-501 is hereby amended to read as follows: 44-501. (a) If in any employment to which the workers compensation act applies, personal injury by accident arising out of and in the course of employment is caused to an employee, the employer shall be liable to pay compensation to the employee in accordance with the provisions of the workers compensation act. In proceedings under the workers compensation act, the burden of proof shall be on the claimant to establish the claimant's right to an award of compensation and to prove the various conditions on which the claimant's right depends. In determining whether the claimant has satisfied this burden of proof, the trier of fact shall consider the whole record.

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

(c) The employee shall not be entitled to recover for the aggravation of a preexisting condition, except to the extent that the work-related injury causes increased disability. Any award of compensation shall be reduced by the amount of functional impairment determined to be preexisting.

(d) (1) If the injury to the employee results from the employee's deliberate intention to cause such injury; or from the employee's willful failure to use a guard or protection against accident required pursuant to any statute and provided for the employee, or a reasonable and proper guard and protection voluntarily furnished the employee by the employer, any compensation in respect to that injury shall be disallowed.

(2) The employer shall not be liable under the workers compensation act where the injury, disability or death was contributed to by the em-

1 ployee’s use or consumption of alcohol or any drugs, chemicals or any
 2 other compounds or substances, including but not limited to, any drugs
 3 or medications which are available to the public without a prescription
 4 from a health care provider, prescription drugs or medications, any form
 5 or type of narcotic drugs, marijuana, stimulants, depressants or hallucin-
 6 ogens. In the case of drugs or medications which are available to the
 7 public without a prescription from a health care provider and prescription
 8 drugs or medications, compensation shall not be denied if the employee
 9 can show that such drugs or medications were being taken or used in
 10 therapeutic doses and there have been no prior incidences of the em-
 11 ployee’s impairment on the job as the result of the use of such drugs or
 12 medications within the previous 24 months. It shall be conclusively pre-
 13 sumed that the employee was impaired due to alcohol or drugs if it is
 14 shown that at the time of the injury that the employee had an alcohol
 15 concentration of .04 or more, or a GCMS confirmatory test by quantita-
 16 tive analysis showing a concentration at or above the levels shown on the
 17 following chart for the drugs of abuse listed:

18 Confirmatory test cutoff levels (ng/ml)

19	Marijuana metabolite 1	15
20	Cocaine metabolite 2	150
21	Opiates:	
22	Morphine.....	2000
23	Codeine.....	2000
24	6-Acetylmorphine4.....	10 ng/ml
25	Phencyclidine	25
26	Amphetamines:	
27	Amphetamine.....	500
28	Methamphetamine 3.....	500

- 29 1 Delta-9-tetrahydrocannabinol-9-carboxylic acid.
- 30 2 Benzoylcegonine.
- 31 3 Specimen must also contain amphetamine at a concentration greater than or equal to
- 32 200 ng/ml.
- 33 4 Test for 6-AM when morphine concentration exceeds 2,000 ng/ml.

34 An employee’s refusal to submit to a chemical test shall not be admissible
 35 evidence to prove impairment unless there was probable cause to believe
 36 that the employee used, possessed or was impaired by a drug or alcohol
 37 while working. The results of a chemical test shall not be admissible ev-
 38 idence to prove impairment unless the following conditions were met:

- 39 (A) There was probable cause to believe that the employee used, had
- 40 possession of, or was impaired by the drug or alcohol while working;
- 41 (B) the test sample was collected at a time contemporaneous with
- 42 the events establishing probable cause;
- 43 (C) the collecting and labeling of the test sample was performed by

1 or under the supervision of a licensed health care professional;

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

7 (E) the test was confirmed by gas chromatography-mass spectroscopy
8 or other comparably reliable analytical method, except that no such con-
9 firmation is required for a blood alcohol sample; and

10 (F) the foundation evidence must establish, beyond a reasonable
11 doubt, that the test results were from the sample taken from the em-
12 ployee.

13 (e) Compensation shall not be paid in case of coronary or coronary
14 artery disease or cerebrovascular injury unless it is shown that the exertion
15 of the work necessary to precipitate the disability was more than the
16 employee's usual work in the course of the employee's regular employ-
17 ment.

18 (f) Except as provided in the workers compensation act, no construc-
19 tion design professional who is retained to perform professional services
20 on a construction project or any employee of a construction design pro-
21 fessional who is assisting or representing the construction design profes-
22 sional in the performance of professional services on the site of the con-
23 struction project, shall be liable for any injury resulting from the
24 employer's failure to comply with safety standards on the construction
25 project for which compensation is recoverable under the workers com-
26 pensation act, unless responsibility for safety practices is specifically as-
27 sumed by contract. The immunity provided by this subsection to any
28 construction design professional shall not apply to the negligent prepara-
29 tion of design plans or specifications.

30 (g) It is the intent of the legislature that the workers compensation
31 act shall be liberally construed for the purpose of bringing employers and
32 employees within the provisions of the act to provide the protections of
33 the workers compensation act to both. The provisions of the workers
34 compensation act shall be applied impartially to both employers and em-
35 ployees in cases arising thereunder.

36 ~~(h) If the employee is receiving retirement benefits under the federal
37 social security act or retirement benefits from any other retirement sys-
38 tem, program or plan which is provided by the employer against which
39 the claim is being made, any compensation benefit payments which the
40 employee is eligible to receive under the workers compensation act for
41 such claim shall be reduced by the weekly equivalent amount of the total
42 amount of all such retirement benefits, less any portion of any such re-
43 tirement benefit, other than retirement benefits under the federal social~~

1 security act, that is attributable to payments or contributions made by the
2 employee, but in no event shall the workers compensation benefit be less
3 than the workers compensation benefit payable for the employee's per-
4 centage of functional impairment.

5 Sec. 2. K.S.A. 44-510h is hereby amended to read as follows: 44-
6 510h. (a) It shall be the duty of the employer to provide the services of
7 a health care provider, and such medical, surgical and hospital treatment,
8 including nursing, medicines, medical and surgical supplies, ambulance,
9 crutches, apparatus and transportation to and from the home of the in-
10 jured employee to a place outside the community in which such employee
11 resides, and within such community if the director, in the director's dis-
12 cretion, so orders, including transportation expenses computed in ac-
13 cordance with subsection (a) of K.S.A. 44-515 and amendments thereto,
14 as may be reasonably necessary to cure and relieve the employee from
15 the effects of the injury. *However, the employee shall have the right to*
16 *choose the initial health care provider to provide medical compensation*
17 *benefits on the employee's behalf. If the services provided by the health*
18 *care provider initially chosen by the employee are unsatisfactory to the*
19 *employee, the employee shall be entitled to health care services provided*
20 *by a health care provider of the employer's choice.*

21 (b) (1) If the director finds, upon application of an injured employee,
22 that the services of the health care provider ~~furnished~~ *selected by the*
23 *employer* as provided in subsection (a) and rendered on behalf of the
24 injured employee are not satisfactory, the director may authorize the ap-
25 pointment of some other health care provider. In any such case, the em-
26 ployer shall submit the names of three health care providers who, if pos-
27 sible given the availability of local health care providers, are not associated
28 in practice together. The injured employee may select one from the list
29 who shall be the authorized treating health care provider. If the injured
30 employee is unable to obtain satisfactory services from any of the health
31 care providers submitted by the employer under this paragraph, either
32 party or both parties may request the director to select a treating health
33 care provider.

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

42 (c) An injured employee whose injury or disability has been estab-
43 lished under the workers compensation act may rely, if done in good faith,

1 solely or partially on treatment by prayer or spiritual means in accordance
2 with the tenets of practice of a church or religious denomination without
3 suffering a loss of benefits subject to the following conditions:

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

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

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

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

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

16 (d) In any employment to which the workers compensation act ap-
17 plies, the employer shall be liable to each employee who is employed as
18 a duly authorized law enforcement officer, ambulance attendant, mobile
19 intensive care technician or firefighter, including any person who is serv-
20 ing on a volunteer basis in such capacity, for all reasonable and necessary
21 preventive medical care and treatment for hepatitis to which such em-
22 ployee is exposed under circumstances arising out of and in the course
23 of employment.

24 Sec. 3. K.S.A. 44-532 is hereby amended to read as follows: 44-532.

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

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

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

4 (1) *Class A nonperson misdemeanor, if the employer had a total gross*
5 *annual payroll for the preceding year of \$20,000 or more but less than*
6 *\$50,000;*

7 (2) *severity level 9, nonperson felony, if the employer had a total gross*
8 *annual payroll for the preceding year of \$50,000 or more but less than*
9 *\$100,000;*

10 (3) *severity level 7, nonperson felony, if the employer had a total gross*
11 *annual payroll for the preceding year of \$100,000 or more but less than*
12 *\$150,000;*

13 (4) *severity level 6, nonperson felony, if the employer had a total gross*
14 *annual payroll for the preceding year of \$150,000 or more but less than*
15 *\$200,000;*

16 (5) *severity level 5, nonperson felony, if the employer had a total gross*
17 *annual payroll for the preceding year of \$200,000 or more.*

18 (d) In addition, whenever the director has reason to believe that any
19 employer has engaged or is engaging in the knowing and intentional fail-
20 ure to secure the payment of workers compensation to the employer's
21 employees as required in subsection (b) of this section, the director shall
22 issue and serve upon such employer a statement of the charges with
23 respect thereto and shall conduct a hearing in accordance with the Kansas
24 administrative procedure act, wherein the employer may be liable to the
25 state for a civil penalty in an amount equal to twice the annual premium
26 the employer would have paid had such employer been insured or
27 \$25,000, whichever amount is greater.

28 (e) The director shall not assess such a fine against a self-employed
29 subcontractor for failure of the subcontractor to secure compensation for
30 the subcontractor personally, however, the director shall enforce the pro-
31 visions of this section for failure of the subcontractor to secure compen-
32 sation for any other employee of the subcontractor as otherwise provided
33 by law.

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

37 (g) All moneys received under this section for costs assessed or mon-
38 etary penalties imposed shall be deposited in the state treasury and cred-
39 ited to the workers compensation fund.

40 (h) (1) Every insurance carrier writing workers' compensation insur-
41 ance for any employment covered under the workers compensation act
42 shall file, with the director or the director's designee, written notice of
43 the issuance, nonrenewal or cancellation of a policy or contract of insur-

1 ance, or any endorsement, providing workers compensation coverage,
2 within 10 days after such issuance, nonrenewal or cancellation. Every such
3 insurance carrier shall file, with the director, written notice of all such
4 policies, contracts and endorsements in force on the effective date of this
5 act.

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

15 (3) Every employer covered by the workers compensation act who is
16 a member of a qualified group-funded workers compensation pool shall
17 give written notice to the director or the director's designee, if such em-
18 ployer changes from a group-funded workers compensation pool to in-
19 suring through an insurance carrier or becoming a self-insurer, such no-
20 tice to be given within 10 days after the effective date of such change.

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

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

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

32 (j) A private firm shall not be eligible to apply to become a self-insurer
33 unless it has been in continuous operation for at least five years or is
34 purchasing an existing self-insured Kansas firm, plant or facility and the
35 operation of the purchased firm, plant or facility: (1) Has been in contin-
36 uous operation in Kansas for at least 10 years; (2) has generated an after-
37 tax profit of at least \$1,000,000 annually for the preceding three consec-
38 utive years; and (3) has a ratio of debt to equity of not greater than 3.5
39 to 1. As used in this subsection, "debt" means the sum of long-term
40 borrowing maturing in excess of one year plus the current portion of long-
41 term borrowing plus short-term financial institution borrowing plus com-
42 mercial paper borrowing, and "equity" means the sum of the book value
43 of stock plus paid-in capital plus retained earnings. The method for cal-

1 culating the amount of security required of self-insureds shall be reviewed
2 by an actuary every five years, beginning in fiscal year 1997. The costs for
3 these actuarial studies shall be paid from the workers compensation fee
4 fund.

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

17 Sec. 4. K.S.A. 44-501, 44-510h and 44-532 are hereby repealed.

18 Sec. 5. This act shall take effect and be in force from and after its
19 publication in the statute book.

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