

3
4 **Substitute for SENATE BILL No. 181**

5
6 By Committee on Commerce

7
8 3-18

9
10 AN ACT concerning workers compensation; relating to work disability;
11 amending K.S.A. 44-501 and 44-510e and repealing the existing sec-
12 tions; also repealing K.S.A. 44-510a.

13
14 *Be it enacted by the Legislature of the State of Kansas:*

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

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

33 (c) The employee shall not be entitled to recover for the aggravation
34 of a preexisting condition, except to the extent that the work-related injury
35 causes increased *functional impairment or disability. A prior impairment*
36 *rating or permanent restrictions are not necessary to prove preexisting*
37 ***[symptomatic]*** *functional impairment or disability. The trier of fact shall*
38 *consider all medical testimony on the issue of preexisting impairment or*
39 *disability. Any award of compensation shall be reduced determined by*
40 *showing, through medical evidence, the amount of functional impairment*
41 ~~*determined to be preexisting or disability caused by work activity for the*~~
42 ~~*employer from whom the employee is seeking compensation.*~~

43 (d) (1) If the injury to the employee results from the employee's

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

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

25 Confirmatory test cutoff levels (ng/ml)

26 Marijuana metabolite 1	15
27 Cocaine metabolite 2	150
28 Opiates:	
29 Morphine	2000
30 Codeine	2000
31 6-Acetylmorphine4.....	10 ng/ml
32 Phencyclidine	25
33 Amphetamines:	
34 Amphetamine	500
35 Methamphetamine 3	500

36 1 Delta-9-tetrahydrocannabinol-9-carboxylic acid.

37 2 Benzoylcegonine.

38 3 Specimen must also contain amphetamine at a concentration greater than or equal to 200
 39 ng/ml.

40 4 Test for 6-AM when morphine concentration exceeds 2,000 ng/ml.

41 An employee's refusal to submit to a chemical test shall not be admissible
 42 evidence to prove impairment unless there was probable cause to believe
 43 that the employee used, possessed or was impaired by a drug or alcohol

1 while working. The results of a chemical test shall not be admissible ev-
2 idence to prove impairment unless the following conditions were met:

3 (A) There was probable cause to believe that the employee used, had
4 possession of, or was impaired by the drug or alcohol while working;

5 (B) the test sample was collected at a time contemporaneous with
6 the events establishing probable cause;

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

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

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

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

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

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

37 (g) It is the intent of the legislature that the workers compensation
38 act shall be liberally construed for the purpose of bringing employers and
39 employees within the provisions of the act to provide the protections of
40 the workers compensation act to both. The provisions of the workers
41 compensation act shall be applied impartially to both employers and em-
42 ployees in cases arising thereunder.

43 (h) If the employee is receiving retirement benefits under the federal

1 social security act or retirement benefits from any other retirement sys-
2 tem, program or plan which is provided by the employer against which
3 the claim is being made, any compensation benefit payments which the
4 employee is eligible to receive under the workers compensation act for
5 such claim shall be reduced by the weekly equivalent amount of the total
6 amount of all such retirement benefits, less any portion of any such re-
7 tirement benefit, other than retirement benefits under the federal social
8 security act, that is attributable to payments or contributions made by the
9 employee, but in no event shall the workers compensation benefit be less
10 than the workers compensation benefit payable for the employee's per-
11 centage of functional impairment.

12 Sec. 2. K.S.A. 44-510e is hereby amended to read as follows: 44-
13 510e. (a) If the employer and the employee are unable to agree upon the
14 amount of compensation to be paid in the case of injury not covered by
15 the schedule in K.S.A. 44-510d and amendments thereto, the amount of
16 compensation shall be settled according to the provisions of the workers
17 compensation act as in other cases of disagreement, except that in case
18 of temporary or permanent partial general disability not covered by such
19 schedule, the employee shall receive weekly compensation as determined
20 in this subsection during such period of temporary or permanent partial
21 general disability not exceeding a maximum of 415 weeks. Weekly com-
22 pensation for temporary partial general disability shall be 66 $\frac{2}{3}$ % of the
23 difference between the average gross weekly wage that the employee was
24 earning prior to such injury as provided in the workers compensation act
25 and the amount the employee is actually earning after such injury in any
26 type of employment, except that in no case shall such weekly compen-
27 sation exceed the maximum as provided for in K.S.A. 44-510c and amend-
28 ments thereto. Permanent partial general disability exists when the em-
29 ployee is disabled in a manner which is partial in character and permanent
30 in quality and which is not covered by the schedule in K.S.A. 44-510d
31 and amendments thereto. The extent of permanent partial general disa-
32 bility shall be the extent, expressed as a percentage, to which the em-
33 ployee, in the opinion of the physician, has lost the ability to perform the
34 work tasks that the employee performed in any substantial gainful em-
35 ployment during the fifteen-year period preceding the accident, averaged
36 together with the difference between the average weekly wage the worker
37 was earning at the time of the injury and the average weekly wage the
38 worker is earning after the injury. In any event, The extent of permanent
39 partial general disability shall not be less than the percentage of functional
40 impairment. Functional impairment means the extent, expressed as a per-
41 centage, of the loss of a portion of the total physiological capabilities of
42 the human body as established by competent medical evidence and based
43 on the fourth edition of the American Medical Association Guides to the

1 Evaluation of Permanent Impairment, if the impairment is contained
2 therein. An employee shall not be entitled to receive permanent partial
3 general disability compensation in excess of the percentage of functional
4 impairment as long as the employee is engaging in any work for wages
5 equal to 90% or more of the average gross weekly wage that the employee
6 was earning at the time of the injury. *An employee shall not be entitled*
7 *to receive general disability compensation in excess of the percentage of*
8 *functional impairment as long as the employee was not under work re-*
9 *strictions at the time of separation from employment. If due to the work-*
10 *related injury the employee is not engaging in any work for wages equal*
11 *to 90% or more of the average gross weekly wage that the employee was*
12 *earning at the time of the injury, the employee shall be entitled to per-*
13 *manent partial general disability compensation in excess of the percentage*
14 *of functional impairment. If the employer and the employee are unable*
15 *to agree upon the employee's functional impairment and if at least two*
16 *medical opinions based on competent medical evidence disagree as to*
17 *the percentage of functional impairment, such matter may be referred*
18 *by the administrative law judge to an independent health care provider*
19 *who shall be selected by the administrative law judge from a list of health*
20 *care providers maintained by the director. The health care provider se-*
21 *lected by the director pursuant to this section shall issue an opinion re-*
22 *garding the employee's functional impairment which shall be considered*
23 *by the administrative law judge in making the final determination. The*
24 *amount of weekly compensation for permanent partial general disability*
25 *shall be determined as follows:*

26 (1) Find the payment rate which shall be the lesser of (A) the amount
27 determined by multiplying the average gross weekly wage of the worker
28 prior to such injury by 66 $\frac{2}{3}$ % or (B) the maximum provided in K.S.A.
29 44-510c and amendments thereto;

30 (2) find the number of disability weeks payable by subtracting from
31 415 weeks the total number of weeks of temporary total disability com-
32 pensation was paid, excluding the first 15 weeks of temporary total disa-
33 bility compensation that was paid, and multiplying the remainder by the
34 percentage of permanent partial general disability as determined under
35 this subsection (a); and

36 (3) multiply the number of disability weeks determined in paragraph
37 (2) of this subsection (a) by the payment rate determined in paragraph
38 (1) of this subsection (a).

39 The resulting award shall be paid for the number of disability weeks at
40 the full payment rate until fully paid or modified. If there is an award of
41 permanent disability as a result of the compensable injury, there shall be
42 a presumption that disability existed immediately after such injury. In any
43 case of permanent partial disability under this section, the employee shall

1 be paid compensation for not to exceed 415 weeks following the date of
2 such injury, subject to review and modification as provided in K.S.A. 44-
3 528 and amendments thereto.

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

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

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

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

35 Sec. 3. K.S.A. 44-501, 44-510a and 44-510e are hereby repealed.

36 Sec. 4. This act shall take effect and be in force from and after its
37 publication in the statute book.

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