

HOUSE BILL No. 2757

By Committee on Commerce and Labor

2-6

9 AN ACT concerning workers compensation; relating to compensation for
10 certain disabilities; amending K.S.A. 44-510c, 44-510d and 44-510e
11 and repealing the existing sections.
12

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

14 Section 1. K.S.A. 44-510c is hereby amended to read as follows: 44-
15 510c. Where death does not result from the injury, compensation shall
16 be paid as provided in K.S.A. 44-510h and 44-510i and amendments
17 thereto and as follows:

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

28 (2) Permanent total disability exists when the employee, on account
29 of the injury, has been rendered completely and permanently incapable
30 of engaging in any type of substantial and gainful employment. Loss of
31 both eyes, both hands, both arms, both feet, or both legs, or any combi-
32 nation thereof, in the absence of proof to the contrary, shall constitute a
33 permanent total disability. Substantially total paralysis, or incurable im-
34 becility or insanity, resulting from injury independent of all other causes,
35 shall constitute permanent total disability. In all other cases permanent
36 total disability shall be determined in accordance with the facts.

37 (b) (1) Where temporary total disability results from the injury, no
38 compensation shall be paid during the first week of disability, except that
39 provided in K.S.A. 44-510h and 44-510i and amendments thereto, unless
40 the temporary total disability exists for three consecutive weeks, in which
41 case compensation shall be paid for the first week of such disability.
42 Thereafter weekly payments shall be made during such temporary total
43 disability, in a sum equal to ~~66-2/3%~~ 75% of the average gross weekly

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

6 (2) Temporary total disability exists when the employee, on account
7 of the injury, has been rendered completely and temporarily incapable of
8 engaging in any type of substantial and gainful employment. A release
9 issued by a health care provider with temporary medical limitations for
10 an employee may or may not be determinative of the employee's actual
11 ability to be engaged in any type of substantial and gainful employment,
12 except that temporary total disability compensation shall not be awarded
13 unless the opinion of the authorized treating health care provider is shown
14 to be based on an assessment of the employee's actual job duties with the
15 employer, with or without accommodation.

16 (3) Where no award has been entered, a return by the employee to
17 any type of substantial and gainful employment or, subject to the provi-
18 sions of subsection (b)(2), a release by a treating health care provider or
19 examining health care provider, who is not regularly employed or retained
20 by the employer, to return to any type of substantial and gainful employ-
21 ment, shall suspend the employee's right to the payment of temporary
22 total disability compensation, but shall not affect any right the employee
23 may have to compensation for partial disability in accordance with K.S.A.
24 44-510d and 44-510e and amendments thereto.

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

28 Sec. 2. K.S.A. 44-510d is hereby amended to read as follows: 44-
29 510d. (a) Where disability, partial in character but permanent in quality,
30 results from the injury, the injured employee shall be entitled to the
31 compensation provided in K.S.A. 44-510h and 44-510i and amendments
32 thereto, but shall not be entitled to any other or further compensation
33 for or during the first week following the injury unless such disability
34 exists for three consecutive weeks, in which event compensation shall be
35 paid for the first week. Thereafter compensation shall be paid for tem-
36 porary total loss of use and as provided in the following schedule, ~~66-2/~~
37 ~~3%~~ 75% of the average gross weekly wages to be computed as provided
38 in K.S.A. 44-511 and amendments thereto, except that in no case shall
39 the weekly compensation be more than the maximum as provided for in
40 K.S.A. 44-510c and amendments thereto. If there is an award of per-
41 manent disability as a result of the injury there shall be a presumption
42 that disability existed immediately after the injury and compensation is to
43 be paid for not to exceed the number of weeks allowed in the following

1 schedule:

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

3 (2) For the loss of a first finger, commonly called the index finger,
4 37 weeks.

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

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

7 (5) For the loss of a fourth finger, commonly called the little finger,
8 15 weeks.

9 (6) Loss of the first phalange of the thumb or of any finger shall be
10 considered to be equal to the loss of $\frac{1}{2}$ of such thumb or finger, and the
11 compensation shall be $\frac{1}{2}$ of the amount specified above. The loss of the
12 first phalange and any part of the second phalange of any finger, which
13 includes the loss of any part of the bone of such second phalange, shall
14 be considered to be equal to the loss of $\frac{2}{3}$ of such finger and the com-
15 pensation shall be $\frac{2}{3}$ of the amount specified above. The loss of the first
16 phalange and any part of the second phalange of a thumb which includes
17 the loss of any part of the bone of such second phalange, shall be consid-
18 ered to be equal to the loss of the entire thumb. The loss of the first and
19 second phalanges and any part of the third proximal phalange of any
20 finger, shall be considered as the loss of the entire finger. Amputation
21 through the joint shall be considered a loss to the next higher schedule.

22 (7) For the loss of a great toe, 30 weeks.

23 (8) For the loss of any toe other than the great toe, 10 weeks.

24 (9) The loss of the first phalange of any toe shall be considered to be
25 equal to the loss of $\frac{1}{2}$ of such toe and the compensation shall be $\frac{1}{2}$ of
26 the amount above specified.

27 (10) The loss of more than one phalange of a toe shall be considered
28 to be equal to the loss of the entire toe.

29 (11) For the loss of a hand, 150 weeks.

30 (12) For the loss of a forearm, 200 weeks.

31 (13) For the loss of an arm, excluding the shoulder joint, shoulder
32 girdle, shoulder musculature or any other shoulder structures, 210 weeks,
33 and for the loss of an arm, including the shoulder joint, shoulder girdle,
34 shoulder musculature or any other shoulder structures, 225 weeks.

35 (14) For the loss of a foot, 125 weeks.

36 (15) For the loss of a lower leg, 190 weeks.

37 (16) For the loss of a leg, 200 weeks.

38 (17) For the loss of an eye, or the complete loss of the sight thereof,
39 120 weeks.

40 (18) Amputation or severance below the wrist shall be considered as
41 the loss of a hand. Amputation at the wrist and below the elbow shall be
42 considered as the loss of the forearm. Amputation at or above the elbow
43 shall be considered loss of the arm. Amputation below the ankle shall be

1 considered loss of the foot. Amputation at the ankle and below the knee
2 shall be considered as loss of the lower leg. Amputation at or above the
3 knee shall be considered as loss of the leg.

4 (19) For the complete loss of hearing of both ears, 110 weeks.

5 (20) For the complete loss of hearing of one ear, 30 weeks.

6 (21) Permanent loss of the use of a finger, thumb, hand, shoulder,
7 arm, forearm, toe, foot, leg or lower leg or the permanent loss of the sight
8 of an eye or the hearing of an ear, shall be equivalent to the loss thereof.
9 For the permanent partial loss of the use of a finger, thumb, hand, shoul-
10 der, arm, toe, foot or leg, or the sight of an eye or the hearing of an ear,
11 compensation shall be paid as provided for in K.S.A. 44-510c and amend-
12 ments thereto, per week during that proportion of the number of weeks
13 in the foregoing schedule provided for the loss of such finger, thumb,
14 hand, shoulder, arm, toe, foot or leg, or the sight of an eye or the hearing
15 of an ear, which partial loss thereof bears to the total loss of a finger,
16 thumb, hand, shoulder, arm, toe, foot or leg, or the sight of an eye or the
17 hearing of an ear; but in no event shall the compensation payable here-
18 under for such partial loss exceed the compensation payable under the
19 schedule for the total loss of such finger, thumb, hand, arm, toe, foot or
20 leg, or the sight of an eye or the hearing of an ear, exclusive of the healing
21 period. As used in this paragraph (21), "shoulder" means the shoulder
22 joint, shoulder girdle, shoulder musculature or any other shoulder
23 structures.

24 (22) For traumatic hernia, compensation shall be limited to the com-
25 pensation under K.S.A. 44-510h and 44-510i and amendments thereto,
26 compensation for temporary total disability during such period of time as
27 such employee is actually unable to work on account of such hernia, and,
28 in the event such hernia is inoperable, weekly compensation during 12
29 weeks, except that, in the event that such hernia is operable, the unrea-
30 sonable refusal of the employee to submit to an operation for surgical
31 repair of such hernia shall deprive such employee of any benefits under
32 the workers compensation act.

33 (23) Loss of a scheduled member shall be based upon permanent
34 impairment of function to the scheduled member as determined using
35 the fourth edition of the American Medical Association Guides to the
36 Evaluation of Permanent Impairment, if the impairment is contained
37 therein.

38 (b) 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
42 be 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.
2 The healing period shall not be more than 10% of the total period allowed
3 for the scheduled injury in question nor in any event for longer than 15
4 weeks. The return of the employee to the employee's usual occupation
5 shall terminate the healing period.

6 Sec. 3. K.S.A. 44-510e is hereby amended to read as follows: 44-
7 510e. (a) If the employer and the employee are unable to agree upon the
8 amount of compensation to be paid in the case of injury not covered by
9 the schedule in K.S.A. 44-510d and amendments thereto, the amount of
10 compensation shall be settled according to the provisions of the workers
11 compensation act as in other cases of disagreement, except that in case
12 of temporary or permanent partial general disability not covered by such
13 schedule, the employee shall receive weekly compensation as determined
14 in this subsection during such period of temporary or permanent partial
15 general disability not exceeding a maximum of 415 weeks. Weekly com-
16 pensation for temporary partial general disability shall be ~~66-2/3%~~ 75%
17 of the difference between the average gross weekly wage that the em-
18 ployee was earning prior to such injury as provided in the workers com-
19 pensation act and the amount the employee is actually earning after such
20 injury in any type of employment, except that in no case shall such weekly
21 compensation exceed the maximum as provided for in K.S.A. 44-510c and
22 amendments thereto. Permanent partial general disability exists when the
23 employee is disabled in a manner which is partial in character and per-
24 manent in quality and which is not covered by the schedule in K.S.A. 44-
25 510d and amendments thereto. The extent of permanent partial general
26 disability shall be the extent, expressed as a percentage, to which the
27 employee, in the opinion of the physician, has lost the ability to perform
28 the work tasks that the employee performed in any substantial gainful
29 employment during the fifteen-year period preceding the accident, av-
30 eraged together with the difference between the average weekly wage
31 the worker was earning at the time of the injury and the average weekly
32 wage the worker is earning after the injury. In any event, the extent of
33 permanent partial general disability shall not be less than the percentage
34 of functional impairment. Functional impairment means the extent, ex-
35 pressed as a percentage, of the loss of a portion of the total physiological
36 capabilities of the human body as established by competent medical ev-
37 idence and based on the fourth edition of the American Medical Asso-
38 ciation Guides to the Evaluation of Permanent Impairment, if the im-
39 pairment is contained therein. An employee shall not be entitled to
40 receive permanent partial general disability compensation in excess of the
41 percentage of functional impairment as long as the employee is engaging
42 in any work for wages equal to 90% or more of the average gross weekly
43 wage that the employee was earning at the time of the injury. If the

1 employer and the employee are unable to agree upon the employee's
2 functional impairment and if at least two medical opinions based on com-
3 petent medical evidence disagree as to the percentage of functional im-
4 pairment, such matter may be referred by the administrative law judge
5 to an independent health care provider who shall be selected by the ad-
6 ministrative law judge from a list of health care providers maintained by
7 the director. The health care provider selected by the director pursuant
8 to this section shall issue an opinion regarding the employee's functional
9 impairment which shall be considered by the administrative law judge in
10 making the final determination. The amount of weekly compensation for
11 permanent partial general disability shall be determined as follows:

12 (1) Find the payment rate which shall be the lesser of (A) the amount
13 determined by multiplying the average gross weekly wage of the worker
14 prior to such injury by ~~66.23%~~ 75% or (B) the maximum provided in
15 K.S.A. 44-510c and amendments thereto;

16 (2) find the number of disability weeks payable by subtracting from
17 415 weeks the total number of weeks of temporary total disability com-
18 pensation was paid, excluding the first 15 weeks of temporary total disa-
19 bility compensation that was paid, and multiplying the remainder by the
20 percentage of permanent partial general disability as determined under
21 this subsection (a); and

22 (3) multiply the number of disability weeks determined in paragraph
23 (2) of this subsection (a) by the payment rate determined in paragraph
24 (1) of this subsection (a).

25 The resulting award shall be paid for the number of disability weeks at
26 the full payment rate until fully paid or modified. If there is an award of
27 permanent disability as a result of the compensable injury, there shall be
28 a presumption that disability existed immediately after such injury. In any
29 case of permanent partial disability under this section, the employee shall
30 be paid compensation for not to exceed 415 weeks following the date of
31 such injury, subject to review and modification as provided in K.S.A. 44-
32 528 and amendments thereto.

33 (b) If an employee has received an injury for which compensation is
34 being paid, and the employee's death is caused by other and independent
35 causes, any payment of compensation already due the employee at the
36 time of death and then unpaid shall be paid to the employee's dependents
37 directly or to the employee's legal representatives if the employee left no
38 dependent, but the liability of the employer for the payments of com-
39 pensation not yet due at the time of the death of such employee shall
40 cease and be abrogated by the employee's death.

41 (c) The total amount of compensation that may be allowed or
42 awarded an injured employee for all injuries received in any one accident
43 shall in no event exceed the compensation which would be payable under

1 the workers compensation act for 100% permanent total disability re-
2 sulting from such accident.

3 (d) Where a minor employee or a minor employee's dependents are
4 entitled to compensation under the workers compensation act, such com-
5 pensation shall be exclusive of all other remedies or causes of action for
6 such injury or death, and no claim or cause of action against the employer
7 shall inure or accrue to or exist in favor of the parent or parents of such
8 minor employee on account of any damage resulting to such parent or
9 parents on account of the loss of earnings or loss of service of such minor
10 employee.

11 (e) In any case of injury to or death of an employee, where the em-
12 ployee or the employee's dependents are entitled to compensation under
13 the workers compensation act, such compensation shall be exclusive of
14 all other remedies or causes of action for such injury or death, and no
15 claim or action shall inure, accrue to or exist in favor of the surviving
16 spouse or any relative or next of kin of such employee against such em-
17 ployer on account of any damage resulting to such surviving spouse or
18 any relative or next of kin on account of the loss of earnings, services, or
19 society of such employee or on any other account resulting from or grow-
20 ing out of the injury or death of such employee.

21 Sec. 4. K.S.A. 44-510c, 44-510d and 44-510e are hereby repealed.

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