

HOUSE BILL No. 2848

By Committee on Commerce and Labor

2-12

9 AN ACT concerning workers compensation; relating to bilateral sched-
10 uled injuries; amending K.S.A. 44-510e and repealing the existing
11 section.
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13 *Be it enacted by the Legislature of the State of Kansas:*

14 Section 1. K.S.A. 44-510e is hereby amended to read as follows: 44-
15 510e. (a) If the employer and the employee are unable to agree upon the
16 amount of compensation to be paid in the case of injury not covered by
17 the schedule in K.S.A. 44-510d and amendments thereto, the amount of
18 compensation shall be settled according to the provisions of the workers
19 compensation act as in other cases of disagreement, except that in case
20 of temporary or permanent partial general disability not covered by such
21 schedule, the employee shall receive weekly compensation as determined
22 in this subsection during such period of temporary or permanent partial
23 general disability not exceeding a maximum of 415 weeks. Weekly com-
24 pensation for temporary partial general disability shall be 66 $\frac{2}{3}$ % of the
25 difference between the average gross weekly wage that the employee was
26 earning prior to such injury as provided in the workers compensation act
27 and the amount the employee is actually earning after such injury in any
28 type of employment, except that in no case shall such weekly compen-
29 sation exceed the maximum as provided for in K.S.A. 44-510c and amend-
30 ments thereto. Permanent partial general disability exists when the em-
31 ployee is disabled in a manner which is partial in character and permanent
32 in quality and which is not covered by the schedule in K.S.A. 44-510d
33 and amendments thereto. *Permanent partial general disability also in-*
34 *cludes, but is not limited to, permanent loss or loss of use, regardless of*
35 *whether such loss or loss of use is total or partial in character, of both*
36 *eyes, both hands, both arms, both shoulders, both feet, both legs or any*
37 *combination thereof, provided such loss or loss of use does not result in*
38 *permanent and total disability.* The extent of permanent partial general
39 disability shall be the extent, expressed as a percentage, to which the
40 employee, in the opinion of the physician, has lost the ability to perform
41 the work tasks that the employee performed in any substantial gainful
42 employment during the fifteen-year period preceding the accident, av-
43 eraged together with the difference between the average weekly wage

1 the worker was earning at the time of the injury and the average weekly
2 wage the worker is earning after the injury. In any event, the extent of
3 permanent partial general disability shall not be less than the percentage
4 of functional impairment. Functional impairment means the extent, ex-
5 pressed as a percentage, of the loss of a portion of the total physiological
6 capabilities of the human body as established by competent medical ev-
7 idence and based on the fourth edition of the American Medical Asso-
8 ciation Guides to the Evaluation of Permanent Impairment, if the im-
9 pairment is contained therein. An employee shall not be entitled to
10 receive permanent partial general disability compensation in excess of the
11 percentage of functional impairment as long as the employee is engaging
12 in any work for wages equal to 90% or more of the average gross weekly
13 wage that the employee was earning at the time of the injury. If the
14 employer and the employee are unable to agree upon the employee's
15 functional impairment and if at least two medical opinions based on com-
16 petent medical evidence disagree as to the percentage of functional im-
17 pairment, such matter may be referred by the administrative law judge
18 to an independent health care provider who shall be selected by the ad-
19 ministrative law judge from a list of health care providers maintained by
20 the director. The health care provider selected by the director pursuant
21 to this section shall issue an opinion regarding the employee's functional
22 impairment which shall be considered by the administrative law judge in
23 making the final determination. The amount of weekly compensation for
24 permanent partial general disability shall be determined as follows:

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

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

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

38 The resulting award shall be paid for the number of disability weeks at
39 the full payment rate until fully paid or modified. If there is an award of
40 permanent disability as a result of the compensable injury, there shall be
41 a presumption that disability existed immediately after such injury. In any
42 case of permanent partial disability under this section, the employee shall
43 be paid compensation for not to exceed 415 weeks following the date of

1 such injury, subject to review and modification as provided in K.S.A. 44-
2 528 and amendments thereto.

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

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

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

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

34 Sec. 2. K.S.A. 44-510e is hereby repealed.

35 Sec. 3. This act shall take effect and be in force from and after its
36 publication in the Kansas register.