

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 limitation of actions; state workplace health and safety program;
5 amending K.S.A. 44-512, 44-557 and 44-578 and K.S.A. 2012 Supp. 2-
6 224a, 44-510d, 44-510e, 44-523, 44-532a, 44-575 and 44-577 and
7 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
35 purchase of workers compensation insurance as described in subsection
36 (a), the state workers compensation self-insurance fund shall not be liable

or the hearing of an ear; but in no event shall the compensation payable hereunder for such partial loss exceed the compensation payable under the schedule for the total loss of such finger, thumb, hand, arm, toe, foot or leg, or the sight of an eye or the hearing of an ear, exclusive of the healing period. As used in this paragraph (21), "shoulder" means the shoulder joint, shoulder girdle, shoulder musculature or any other shoulder structures.

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

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

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

(c) Whenever the employee is entitled to compensation for a specific injury under the foregoing schedule, the same shall be exclusive of all other compensation except the benefits provided in K.S.A. 44-510h and 44-510i, and amendments thereto, and no additional compensation shall be allowable or payable for any temporary or permanent, partial or total disability, except that the director, in proper cases, may allow additional compensation during the actual healing period, following amputation. The healing period shall not be more than 10% of the total period allowed for the scheduled injury in question nor in any event for longer than 15 weeks. The return of the employee to the employee's usual occupation shall terminate the healing period.

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

(1) Payment rate shall be the lesser of: (A) The amount determined by multiplying the average weekly wage of the worker prior to such injury

the injury as established by competent medical evidence and based on the fourth ~~sixth~~ edition of the American medical association guides to the evaluation of permanent impairment, if the impairment is contained therein, until January 1, 2015, but for injuries occurring on and after January 1, 2015, based on the sixth edition of the American medical association guides to the evaluation of permanent impairment, if the impairment is contained therein.

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

- (i) The percentage of functional impairment determined to be caused solely by the injury exceeds 7½% to the body as a whole or the overall functional impairment is equal to or exceeds 10% to the body as a whole in cases where there is preexisting functional impairment; and
- (ii) the employee sustained a post-injury wage loss, as defined in subsection (a)(2)(E) of K.S.A. 44-510e, and amendments thereto, of at least 10% which is directly attributable to the work injury and not to other causes or factors.

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

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

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