

**HOUSE BILL No. 2711**

By Committee on Federal and State Affairs

2-22

1 AN ACT concerning workers compensation; relating to benefit reductions  
2 due to retirement benefits; amending K.S.A. 2015 Supp. 44-501 and  
3 repealing the existing section.  
4

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

6 Section 1. K.S.A. 2015 Supp. 44-501 is hereby amended to read as  
7 follows: 44-501.(a) (1) Compensation for an injury shall be disallowed if  
8 such injury to the employee results from:

- 9 (A) The employee's deliberate intention to cause such injury;
- 10 (B) the employee's willful failure to use a guard or protection against  
11 accident or injury which is required pursuant to any statute and provided  
12 for the employee;
- 13 (C) the employee's willful failure to use a reasonable and proper  
14 guard and protection voluntarily furnished the employee by the employer;
- 15 (D) the employee's reckless violation of their employer's workplace  
16 safety rules or regulations; or
- 17 (E) the employee's voluntary participation in fighting or horseplay  
18 with a co-employee for any reason, work related or otherwise.

19 (2) ~~Subparagraphs (B) and (C) of paragraph (1) of Subsection (a)(1)~~  
20 ~~(B) and (C)~~ shall not apply when it was reasonable under the totality of the  
21 circumstances to not use such equipment, or if the employer approved the  
22 work engaged in at the time of an accident or injury to be performed  
23 without such equipment.

24 (b) (1) (A) The employer shall not be liable under the workers  
25 compensation act where the injury, disability or death was contributed to  
26 by the employee's use or consumption of alcohol or any drugs, chemicals  
27 or any other compounds or substances, including, but not limited to, any  
28 drugs or medications which are available to the public without a  
29 prescription from a health care provider, prescription drugs or medications,  
30 any form or type of narcotic drugs, marijuana, stimulants, depressants or  
31 hallucinogens.

32 (B) In the case of drugs or medications which are available to the  
33 public without a prescription from a health care provider and prescription  
34 drugs or medications, compensation shall not be denied if the employee  
35 can show that such drugs or medications were being taken or used in  
36 therapeutic doses and there have been no prior incidences of the

1 employee's impairment on the job as the result of the use of such drugs or  
2 medications within the previous 24 months.

3 (C) It shall be conclusively presumed that the employee was impaired  
4 due to alcohol or drugs if it is shown that, at the time of the injury, the  
5 employee had an alcohol concentration of .04 or more, or a GCMS  
6 confirmatory test by quantitative analysis showing a concentration at or  
7 above the levels shown on the following chart for the drugs of abuse listed:

	Confirmatory test cutoff levels (ng/ml)
10 Marijuana metabolite <sup>1</sup> .....	15
11 Cocaine metabolite <sup>2</sup> .....	150
12 Opiates:	
13 Morphine .....	2000
14 Codeine .....	2000
15 6-Acetylmorphine <sup>4</sup> .....	10 ng/ml
16 Phencyclidine .....	25
17 Amphetamines:	
18 Amphetamine .....	500
19 Methamphetamine <sup>3</sup> .....	500

20 <sup>1</sup> Delta-9-tetrahydrocannabinol-9-carboxylic acid.

21 <sup>2</sup> Benzoylcegonine.

22 <sup>3</sup> Specimen must also contain amphetamine at a concentration greater  
23 than or equal to 200 ng/ml.

24 <sup>4</sup> Test for 6-AM when morphine concentration exceeds 2,000 ng/ml.

25 (D) If it is shown that the employee was impaired pursuant to  
26 subsection (b)(1)(C) at the time of the injury, there shall be a rebuttable  
27 presumption that the accident, injury, disability or death was contributed to  
28 by such impairment. The employee may overcome the presumption of  
29 contribution by clear and convincing evidence.

30 (E) An employee's refusal to submit to a chemical test at the request  
31 of the employer shall result in the forfeiture of benefits under the workers  
32 compensation act if the employer had sufficient cause to suspect the use of  
33 alcohol or drugs by the claimant or if the employer's policy clearly  
34 authorizes post-injury testing.

35 (2) The results of a chemical test shall be admissible evidence to  
36 prove impairment if the employer establishes that the testing was done  
37 under any of the following circumstances:

38 (A) As a result of an employer mandated drug testing policy, in place  
39 in writing prior to the date of accident or injury, requiring any worker to  
40 submit to testing for drugs or alcohol;

41 (B) during an autopsy or in the normal course of medical treatment  
42 for reasons related to the health and welfare of the injured worker and not  
43

1 at the direction of the employer;

2 (C) the worker, prior to the date and time of the accident or injury,  
3 gave written consent to the employer that the worker would voluntarily  
4 submit to a chemical test for drugs or alcohol following any accident or  
5 injury;

6 (D) the worker voluntarily agrees to submit to a chemical test for  
7 drugs or alcohol following any accident or injury; or

8 (E) as a result of federal or state law or a federal or state rule or  
9 regulation having the force and effect of law requiring a post-injury testing  
10 program and such required program was properly implemented at the time  
11 of testing.

12 (3) Notwithstanding subsection (b)(2), the results of a chemical test  
13 performed on a sample collected by an employer shall not be admissible  
14 evidence to prove impairment unless the following conditions are met:

15 (A) The test sample was collected within a reasonable time following  
16 the accident or injury;

17 (B) the collecting and labeling of the test sample was performed by or  
18 under the supervision of a licensed health care professional;

19 (C) the test was performed by a laboratory approved by the United  
20 States department of health and human services or licensed by the  
21 department of health and environment, except that a blood sample may be  
22 tested for alcohol content by a laboratory commonly used for that purpose  
23 by state law enforcement agencies;

24 (D) the test was confirmed by gas chromatography-mass  
25 spectroscopy or other comparably reliable analytical method, except that  
26 no such confirmation is required for a blood alcohol sample;

27 (E) the foundation evidence must establish, beyond a reasonable  
28 doubt, that the test results were from the sample taken from the employee;  
29 and

30 (F) a split sample sufficient for testing shall be retained and made  
31 available to the employee within 48 hours of a positive test.

32 (c) (1) Except as provided in paragraph (2), compensation shall not  
33 be paid in case of coronary or coronary artery disease or cerebrovascular  
34 injury unless it is shown that the exertion of the work necessary to  
35 precipitate the disability was more than the employee's usual work in the  
36 course of the employee's regular employment.

37 (2) For events occurring on or after July 1, 2014, in the case of a  
38 firefighter as defined by K.S.A. 40-1709(b)(1), and amendments thereto,  
39 or a law enforcement officer as defined by K.S.A. 74-5602, and  
40 amendments thereto, coronary or coronary artery disease or  
41 cerebrovascular injury shall be compensable if:

42 (A) The injury can be identified as caused by a specific event  
43 occurring in the course and scope of employment;

1 (B) the coronary or cerebrovascular injury occurred within 24 hours  
2 of the specific event; and

3 (C) the specific event was the prevailing factor in causing the  
4 coronary or coronary artery disease or cerebrovascular injury.

5 (d) Except as provided in the workers compensation act, no  
6 construction design professional who is retained to perform professional  
7 services on a construction project or any employee of a construction  
8 design professional who is assisting or representing the construction  
9 design professional in the performance of professional services on the site  
10 of the construction project, shall be liable for any injury resulting from the  
11 employer's failure to comply with safety standards on the construction  
12 project for which compensation is recoverable under the workers  
13 compensation act, unless responsibility for safety practices is specifically  
14 assumed by contract. The immunity provided by this subsection to any  
15 construction design professional shall not apply to the negligent  
16 preparation of design plans or specifications.

17 (e) An award of compensation for permanent partial impairment,  
18 work disability, or permanent total disability shall be reduced by the  
19 amount of functional impairment determined to be preexisting. Any such  
20 reduction shall not apply to temporary total disability, nor shall it apply to  
21 compensation for medical treatment.

22 (1) Where workers compensation benefits have previously been  
23 awarded through settlement or judicial or administrative determination in  
24 Kansas, the percentage basis of the prior settlement or award shall  
25 conclusively establish the amount of functional impairment determined to  
26 be preexisting. Where workers compensation benefits have not previously  
27 been awarded through settlement or judicial or administrative  
28 determination in Kansas, the amount of preexisting functional impairment  
29 shall be established by competent evidence.

30 (2) In all cases, the applicable reduction shall be calculated as  
31 follows:

32 (A) If the preexisting impairment is the result of injury sustained  
33 while working for the employer against whom workers compensation  
34 benefits are currently being sought, any award of compensation shall be  
35 reduced by the current dollar value attributable under the workers  
36 compensation act to the percentage of functional impairment determined to  
37 be preexisting. The "current dollar value" shall be calculated by  
38 multiplying the percentage of preexisting impairment by the compensation  
39 rate in effect on the date of the accident or injury against which the  
40 reduction will be applied.

41 (B) In all other cases, the employer against whom benefits are  
42 currently being sought shall be entitled to a credit for the percentage of  
43 preexisting impairment.

1 (f) If the employee receives, whether periodically or by lump sum,  
2 retirement benefits *other than* under the federal social security act ~~or~~  
3 ~~retirement benefits from any other retirement system, program, policy or~~  
4 ~~plan~~ which is provided by the employer against which the claim is being  
5 made, any compensation benefit payments *for permanent disability* which  
6 the employee is eligible to receive under the workers compensation act for  
7 such claim shall be reduced by the weekly equivalent amount of the total  
8 amount of all such retirement benefits, less any portion of any such  
9 retirement benefit, ~~other than retirement benefits under the federal social~~  
10 ~~security act~~, that is attributable to payments or contributions made by the  
11 employee, but in no event shall the workers compensation benefit be less  
12 than the workers compensation benefit payable for the employee's  
13 percentage of functional impairment. Where the employee elects to take  
14 retirement benefits in a lump sum, the lump sum payment shall be  
15 amortized at the rate of 4% per year over the employee's life expectancy to  
16 determine the weekly equivalent value of the benefits.

17 (g) *If the employee receives retirement benefits under the federal*  
18 *social security act, any compensation benefit payments for permanent*  
19 *disability which the employee is eligible to receive under the Kansas*  
20 *workers compensation act for such claim shall be reduced by 50% of the*  
21 *weekly equivalent amount of the employee's social security retirement*  
22 *benefit. In no event shall the workers compensation benefit be less than*  
23 *the workers compensation benefit payable for the employee's percentage*  
24 *of functional impairment.*

25 Sec. 2. K.S.A. 2015 Supp. 44-501 is hereby repealed.

26 Sec. 3. This act shall take effect and be in force from and after its  
27 publication in the statute book.