

## TESTIMONY IN FAVOR OF SENATE BILL 339

BY  
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Thank you for allowing me to provide testimony concerning Senate Bill 339.

My name is Jan Fisher. I am an attorney and have practiced in the area of workers compensation for over 30 years. For the last six (6) years, I have also been employed as an adjunct professor for Washburn Law School and have taught a class on workers compensation benefits. My testimony today is presented on behalf of the Kansas Trial Lawyers Association (KTLA).

According to the annual statistical report - issued by the Kansas Division of Workers Compensation - there were 46,751 total occupational injuries and illnesses reported to the Division of Workers Compensation during 2017. From another perspective, 128 employees per day were either injured or killed on the job in Kansas during the last fiscal year.

In 2017, 42 workplace fatalities were reported to the Division of Workers Compensation. Over the last ten (10) years, there was an average of 46 workplace deaths reported to the Division of Workers Compensation each year.

Obviously this represents a very small proportion of the overall number of workplace accidents and illnesses reported in Kansas. However, it is equally obvious that fatalities represent the most devastating result of a workplace accident.

Compensation for workplace accidents resulting in death is set out in K.S.A. 44-510b. One of the purposes of workers compensation law - in cases in which the work injury results in death of the employee - is to provide funds to cover burial expenses. SB 339 increases the maximum paid by the employer for the reasonable expense of burial from \$5,000.00 to \$15,000.00.

According to the annual Funeral Price Survey - conducted by the Funeral Directors Association - the average cost for an adult funeral in 2017 was \$8,755.00. This figure does not include cemetery costs such as grave space, a grave marker and opening and closing of the grave.

So the increase in maximum payment for funeral expenses allows for the realistic cost of a funeral and burial.

The other purpose of providing benefits - in cases of death from work injury - is to take care of the members of the decedent's family and other individuals who were economically dependent upon the decedent's capacity to earn income. SB 339 also addresses this purpose.

The maximum compensation paid for a work related death is \$300,000.00. Prior to the 2011 amendments to the Kansas Workers Compensation Act, the maximum compensation payable in case of a work-related death was \$250,000.00. Not all work-related deaths result in payment of \$300,000.00. This is only the maximum amount of compensation available. All compensation is based on two-thirds (2/3) of the employee's average weekly wage.

K.S.A. 44-510b indicates that - in order to receive workers compensation benefits for a work-related death - the person claiming benefits must normally be both 1) a "member of the family" (see K.S.A. 44-508( c)); and 2) actually dependent upon the deceased.

The statute gives priority to the claims of the spouse and children of the decedent. There is a conclusive presumption of 100% dependency for the spouse and for the decedent's children. If there are both a spouse and children, 50% of the compensation is paid to the spouse and 50% to the children. Again, compensation is based on two-thirds (2/3) of the average weekly wage the decedent was making at the time of the accident. When there is a surviving spouse and / or children, all benefits are paid to them.

The current statute mandates an initial payment of \$40,000.00 to be paid to the spouse and to the children. Senate Bill 339 increases this amount to \$60,000.00. The bill does not increase the total amount of compensation that a dependent may receive. It simply increases the amount to be paid upfront.

Increasing the amount of compensation to be paid initially from \$40,000.00 to \$60,000.00 is an acknowledgment that there are substantial expenses that are immediately incurred with the death of the employee. This increase allows for a smoother transition for the spouse and children and reduces financial pressure to settle the death case for a fraction of the money owed.

SB 339 also increases the amount that an employer may be liable to pay for a Court-appointed conservator from \$1,000.00 to \$5,000.00. When there are minor children involved, our statutes mandate the appointment of a conservator to protect those monies due to any minor children. The services of a conservator may be complicated and expensive when there are competing interests involved.

If there are no surviving spouse or dependent children, compensation is paid to other dependents who are "members of the family" and who are wholly dependent upon the employee's earnings. If there are members of the family - other than a spouse and /

or children - who are wholly dependent, all compensation is paid to these wholly dependent individuals. An example of a wholly dependent member of the family might be an elderly parent or disabled sibling.

K.S.A. 44-510b currently limits compensation to these individuals to \$18,500.00.

If there is no spouse or dependent children, financial dependency must be proven by specific facts. Adults who are not in the categories of persons presumed to be dependent must usually offer evidence as to why the claimed dependency exists. The explanation usually cannot be simply that the person making the claim does not like the work available locally.

SB 339 acknowledges that - where a member of the family is wholly dependent upon the deceased employee - a maximum benefit of \$18,500.00 is woefully inadequate. SB 339 increases the maximum benefit to \$100,000.00. Compensation is paid on a weekly basis and is based on two-thirds (2/3) of the decedent's average weekly wage.

There is no lump sum payment of compensation. In addition, workers compensation benefits are terminated when the wholly dependent person receives more than 50% of their support from any other source of earnings or income.

The increase from \$18,500.00 to \$100,000.00 maximum has also been applied to partially dependent members of the family. These partially dependent members of the family receive compensation based on a formula that considers the decedent's average yearly earnings and the amount of support supplied to the dependents during the two (2) years preceding the date of injury. Again, these payments are made based on two-thirds (2/3) of the average weekly wage.

This is an extremely rare scenario in that the individual claiming workers compensation benefits must prove actual partial dependency - not simply that the deceased employee provided them some money from time to time. It must be shown that the deceased worker - in fact - partially contributed a portion of his income to the support of such persons.

Subsection (d) deals with the situation where the deceased employee leaves no spouse or children and leaves no other wholly or partially dependent family members. This section acknowledges that some amount of compensation should be paid to heirs of the decedent even if no monetary dependency exists.

First, an heir is not necessarily a "member of the family". "Heir" is defined by Kansas probate law. Second, this section allows a lesser amount of compensation to those family members who do not meet the definition of "dependency". The most common example would be the adult children of the deceased or the parent of the deceased.

The Kansas Workers Compensation Law establishes benefits to all those who are permanently injured at work even if that accidental injury does not result in a reduction in

wage-earning capacity. In fact, K.S.A.44-510d provides compensation for "scheduled injuries" based solely on the anatomical damage to the body part. It does not provide any additional compensation upon proof of a reduction in ability to earn wages.

Subsection (d) is the corollary to this payment of compensation based on functional impairment or anatomical damage to the body part. SB 339 provide a parallel type of benefit to the heirs of a employee who dies as a result of a work-related accident.

The current statute limits compensation to \$25,000.00. No payment is required if the employer has procured a life insurance policy with beneficiaries designated by the employee which provides coverage in the amount not less than \$18,500.00.

Subsection (d) is not equivalent to a life insurance policy. Life insurance is a fringe benefit bargained for by the employee as part of the compensation package. It is paid regardless of the cause of the death. Life insurance should not be substituted for compensation paid due to a work-related death.

SB 339 increases the lump-sum payment to \$100,000.00. This is paid to the legal heirs of the employee in accordance with Kansas law. In 2011 - when the overall maximum compensation for death benefits increased to \$300,000.00 - there was not a corresponding increase in payment to the heirs of a worker who dies as a result of a work accident. This increase brings Subsection (d) benefits in line with the overall increase in death benefits provided for in the 2011 amendments to the Kansas Workers Compensation Act.