

**SENATE BILL No. 504**

By Committee on Federal and State Affairs

2-14

1 AN ACT concerning worker's compensation; relating to benefit reductions  
2 due to retirement benefits funded by the employer; providing such  
3 benefit reductions shall apply to benefits for permanent disability;  
4 exempting benefits the employee was receiving prior to the injury and  
5 under the federal social security act from such reductions; amending  
6 K.S.A. 44-501 and repealing the existing section.

7  
8 *Be it enacted by the Legislature of the State of Kansas:*

9 Section 1. K.S.A. 44-501 is hereby amended to read as follows: 44-  
10 501. (a) (1) Compensation for an injury shall be disallowed if ~~such the~~  
11 injury to the employee results from:

12 (A) The employee's deliberate intention to cause ~~such the~~ injury;

13 (B) the employee's willful failure to use a guard or protection against  
14 accident or injury which is required pursuant to any statute and provided  
15 for the employee;

16 (C) the employee's willful failure to use a reasonable and proper  
17 guard and protection voluntarily furnished to the employee by the  
18 employer;

19 (D) the employee's reckless violation of their employer's workplace  
20 safety rules or regulations; or

21 (E) the employee's voluntary participation in fighting or horseplay  
22 with a co-employee for any reason, work related or otherwise.

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

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

36 (B) In the case of drugs or medications ~~which that~~ are available to the

1 public without a prescription from a health care provider and prescription  
 2 drugs or medications, compensation shall not be denied if the employee  
 3 can show that ~~such~~ the drugs or medications were being taken or used in  
 4 therapeutic doses and there have been no prior incidences of the  
 5 employee's impairment on the job as the result of the use of ~~such~~ the drugs  
 6 or medications within the previous 24 months.

7 (C) It shall be conclusively presumed that the employee was impaired  
 8 due to alcohol or drugs if it is shown that, at the time of the injury, the  
 9 employee had an alcohol concentration of ~~04~~ 0.04 or more, or a GCMS  
 10 confirmatory test by quantitative analysis showing a concentration at or  
 11 above the levels shown on the following chart for the drugs of abuse listed:

	Confirmatory test cutoff levels (ng/ml)
15 Marijuana metabolite <sup>1</sup> .....	15
16 Cocaine metabolite <sup>2</sup> .....	150
17 Opiates:	
18     Morphine .....	2000
19     Codeine .....	2000
20     6-Acetylmorphine <sup>43</sup> .....	10 ng/ml
21     Phencyclidine .....	25
22 Amphetamines:	
23     Amphetamine .....	500
24     Methamphetamine <sup>34</sup> .....	500

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

26 <sup>2</sup> Benzoylcegonine.

27 <sup>3</sup> ~~Specimen must also contain amphetamine at a concentration greater~~  
 28 ~~than or equal to 200 ng/ml~~ *Test for 6-AM when morphine concentration*  
 29 *exceeds 2,000 ng/ml.*

30 <sup>4</sup> ~~Test for 6-AM when morphine concentration exceeds 2,000-~~  
 31 ~~ng/ml~~ *Specimen must also contain amphetamine at a concentration*  
 32 *greater than or equal to 200 ng/ml.*

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

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

43 (2) The results of a chemical test shall be admissible evidence to

1 prove impairment if the employer establishes that the testing was done  
2 under any of the following circumstances:

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

6 (B) during an autopsy or in the normal course of medical treatment  
7 for reasons related to the health and welfare of the injured worker and not  
8 at the direction of the employer;

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

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

15 (E) as a result of federal or state law or a federal or state rule or  
16 regulation having the force and effect of law requiring a post-injury testing  
17 program and ~~such~~ *the* required program was properly implemented at the  
18 time of testing.

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

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

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

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

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

34 (E) the foundation evidence must establish, beyond a reasonable  
35 doubt, that the test results were from the sample taken from the employee;  
36 and

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

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

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

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

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

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

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

24       (e) An award of compensation for permanent partial impairment,  
25 work disability, or permanent total disability shall be reduced by the  
26 amount of functional impairment determined to be preexisting. Any such  
27 reduction shall not apply to temporary total disability, nor shall it apply to  
28 compensation for medical treatment.

29       (1) Where workers compensation benefits have previously been  
30 awarded through settlement or judicial or administrative determination in  
31 Kansas, the percentage basis of the prior settlement or award shall  
32 conclusively establish the amount of functional impairment determined to  
33 be preexisting. Where workers compensation benefits have not previously  
34 been awarded through settlement or judicial or administrative  
35 determination in Kansas, the amount of preexisting functional impairment  
36 shall be established by competent evidence.

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

39       (A) If the preexisting impairment is the result of injury sustained  
40 while working for the employer against whom workers compensation  
41 benefits are currently being sought, any award of compensation shall be  
42 reduced by the current dollar value attributable under the workers  
43 compensation act to the percentage of functional impairment determined to

1 be preexisting. The "current dollar value" shall be calculated by  
2 multiplying the percentage of preexisting impairment by the compensation  
3 rate in effect on the date of the accident or injury against which the  
4 reduction will be applied.

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

8 (f) (1) ~~If, after the injury, the employee receives, whether periodically~~  
9 ~~or by lump sum, begins receiving retirement benefits that are funded by~~  
10 ~~the employer against whom the claim is being made, other than retirement~~  
11 ~~benefits under the federal social security act or retirement benefits from~~  
12 ~~any other retirement system, program, policy or plan which is provided by~~  
13 ~~the employer against which the claim is being made, any compensation~~  
14 ~~benefit payments which for permanent disability that the employee is~~  
15 ~~eligible to receive under the workers compensation act for such the claim~~  
16 ~~shall be reduced by the weekly equivalent amount of the total amount of~~  
17 ~~all such retirement benefits, less any. No portion of any such retirement~~  
18 ~~benefit, other than retirement benefits under the federal social security act,~~  
19 ~~benefits that is attributable to payments or contributions made by the~~  
20 ~~employee, but in no event shall the be subject to this reduction.~~

21 (2) *If the employee receives retirement benefits through any*  
22 *retirement plan as provided in paragraph (1), workers compensation*  
23 *benefit benefits for permanent disability shall not be less than the workers*  
24 *compensation benefit payable for the employee's percentage of functional*  
25 *impairment.*

26 (3) Where the employee elects to take retirement benefits in a lump  
27 sum, the lump sum payment shall be amortized at the rate of 4% per year  
28 over the employee's life expectancy to determine the weekly equivalent  
29 value of the benefits.

30 Sec. 2. K.S.A. 44-501 is hereby repealed.

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