



**KANSAS
TRIAL LAWYERS
ASSOCIATION**

To: Senator Renee Erickson, Chair
Members of the Senate Commerce Committee

From: Phillip Slape, Slape & Howard, Wichita
On Behalf of the Kansas Trial Lawyers Association

Date: March 28, 2023

Re: SB 38 Concerning an employer's liability for maximum liability for permanent total disability (Proponent)

My name is Phillip Slape with the Law Firm of Slape & Howard, and a member of the Kansas Trial Lawyers Association. (KTLA). Over the past 25 years, I have represented Kansans that have been injured on the job. I am presenting this written testimony on behalf of KTLA and in support of SB 38. I respectfully request that the Committee pass the bill favorably.

The State of Kansas has a proud history of protecting injured workers. In 1912, Kansas became one of the first states to enact workers compensation laws. These laws struck a compromise between workers and their employers, often referred to as the "Grand Bargain". Workers forfeited their constitutional right to bring a lawsuit in district court to obtain compensation for injury and loss. In exchange, workers received prompt medical treatment and wage replacement benefits without proving the employer's negligence. Because of this bargain, the only recovery a Kansas worker can seek against their employer for an injury on the job is through worker's compensation. This is why workers compensation is often referred to as an exclusive remedy.

The Workers Compensation Act takes away the worker's constitutional right to a jury trial, and therefore does not allow for any further recovery, regardless of whether the employer was violating safety procedures, not following applicable laws, or acting grossly negligent causing a worker's injury.

The Act is a system that covers almost every Kansan, regardless of position. The Kansas Constitution demands that the right for its citizens to seek damages through a jury is absolute, and for our workers compensation system to remain constitutional, it is essential that the Act reflect an

equitable balance of benefits paid to the injured worker. Under current law, the Permanent Total Disability award cap no longer reflects an equitable balance of benefits.

If a worker survives an injury, a Permanent Total Disability (PTD) award is the maximum monetary award a worker can receive in Kansas. An award of PTD benefits occurs when a worker is no longer capable of engaging in substantial and gainful employment. In layman's terms, it occurs when an individual can no longer work. It is currently \$155,000. This means that no matter what the severity of the injury, age of the worker, or any other circumstance, a worker will never receive more than \$155,000. Any monetary benefit that the worker receives counts towards this cap, including weekly benefits that the worker receives while the claim is ongoing. At our current maximum rate, this is barely 4 years of benefits. Most PTD claims take a number of years to reach a conclusion, and by the time an award is issued, the \$155,000 cap has already been severely decreased by weekly benefits received.

The cap has not increased consistent with economic changes in our society. For example, in 1987, the cap was \$125,000. The cap remained at the same level until finally being increased by a mere \$30,000 in 2011, almost a quarter of a century later. It has remained at \$155,000 through today. This number is difficult to justify. Our workers are yet again experiencing a period of stagnation in the PTD benefit amounts. This shortcoming is apparent when reviewing the wage data that our state collects. If the PTD benefit rates would've increased consistent with the increase in Kansans' wage rates after 1987, the current PTD cap should be set at \$425,000. This is why I am here today to point out how woefully inadequate \$155,000 is to our workers.

Senate Bill 38 addresses this issue by increasing the PTD benefit rate from \$155,000 to \$350,000. This change will move Kansas from being last in the nation in PTD benefits, to be ranked 49th in the nation. In comparison to our state's cap, 44 states provide lifetime benefits or benefits through the age of social security retirement.

Of the clients that our firm represents, less than 1% fall into the PTD category. However, the amount of benefits paid to these individuals is essential to their future. Make no mistake, Kansans that are permanently and totally disabled from on-the-job injuries represent the most catastrophically injured clients that we represent. It includes those that have been paralyzed, have traumatic brain injuries, or have been so severely injured that they require lifetime care.

The witnesses that testified before the Senate Commerce Committee in 2022 on a very similar bill have had injuries that have not only decimated them physically, but financially as well. I cannot overstate how incredibly unfair and ambiguous the current capped amount is to these workers, and I implore you to recommend SB 38 favorably. Kansas can and should be better than 50th in the nation.

Please vote yes on SB 38.