

SESSION OF 2024

SUPPLEMENTAL NOTE ON SENATE BILL NO. 430

As Recommended by Senate Committee on
Commerce

Brief*

SB 430 would amend workers compensation law to, amongst other things, increase lifetime benefit maximums, provide coverage for members of the Kansas National Guard, and modernize elements of the administrative process.

Lifetime Benefit Caps

The bill would increase the following lifetime maximum benefits:

Benefit	Current Law	SB 430
Death	\$300,000	\$500,000
Permanent Total Disability	\$155,000	\$400,000
Temporary Total Disability	\$130,000	\$225,000
Permanent Partial Disability	\$130,000	\$225,000
Temporary Partial Disability	\$130,000	\$225,000
Functional Only	\$75,000	\$100,000

The bill would also establish, beginning on July 1, 2027, an adjustment formula that would increase the maximum benefit caps annually by a five-year average of the percentage change in the state average weekly wage.

*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <http://www.kslegislature.org>

Additional Benefit Changes

Additional Benefit Payments and Reimbursements

The bill would require an employer to provide reimbursement for “reasonable expenses” for overnight accommodations in cases in which the employer requires the employee to seek a medical opinion outside of their town or city of residence. The bill would also increase the per diem requirement from \$15 to \$30 to help defray the employee’s meal expenses. [Note: Employers would still be required to provide funds for transportation.]

The bill would increase the amount of medical charges an employer is liable to cover from \$500 to \$800 when an employee consults a healthcare provider for the purpose of examination, diagnosis, or treatment without prior application or approval.

Benefit Calculation

The bill would clarify the reduction in the award of compensation for both permanent partial and permanent total disability based upon preexisting functional impairment is only for the “same physical structure as the body part injured.”

The bill would also amend the benefit reduction calculations for retirement benefits under the Federal Social Security Act by only deducting 50.0 percent of the weekly equivalent amount of benefits from the employee’s permanent partial or permanent total disability benefits. However, the bill would exclude temporary total and temporary partial disability compensation from said deduction. [Note: State law currently deducts 100.0 percent of Federal Social Security Act benefits from the employee’s disability benefits.]

The bill would amend the definition of “wage” by excluding from the calculation of their average weekly wage

the employee's first week of employment if the employee worked less than their expected weekly schedule that week.

Benefit Payment Methods

The bill would allow, upon agreement of the parties, for benefit payments to be made by electronic funds transfer or a payment card. Should payment be made in this manner, the bill would require that notification of payment by either electronic funds transfer or payment card be made to the injured worker's attorney each time a payment is made.

Minimum Weekly Payments

The bill would increase the minimum weekly benefit payment amount from \$25 to \$50.

Death

The bill would require a judicial determination of dependency prior to any initial payments for the death of an employee due to injury.

The bill would also replace the term "minor child" with "wholly dependent child" and require benefit payments to continue until the latest of the following dates:

- The wholly dependent child, who is not enrolled in high school, becomes 18 years of age;
- If enrolled in high school, May 30 of the wholly dependent child's senior year in high school or until the child becomes 19 years of age, whichever comes first; or
- The wholly dependent child's 23rd birthday, if such child is a student enrolled full-time in an accredited institution of higher education or vocational education.

Injuries Not on the Schedule

For injuries not on the schedule, the bill would amend eligibility requirements for an employee to receive permanent partial general disability compensation to employees who suffer an injury that, among other things, has a functional impairment caused solely by the injury that is equal to or exceeds 7.5 percent to the body as a whole. [Note: State law requires the amount of impairment to exceed 7.5 percent.]

Permanent Partial Disability

The bill would amend the compensation calculation for the loss of or loss of use of a scheduled member to be the percentage of functional impairment the employee sustained from the injury.

Kansas National Guard

The bill would entitle members of the Kansas National Guard, who are eligible to receive workers compensation benefits under the current program, to receive their benefits under the general workers compensation benefits starting July 1, 2024. [Note: Any wound, injury, disease, illness, or death that occurs prior to July 1, 2024, would be governed by their current benefits.]

The bill states that, for benefit calculation, the service member's current military earnings would be used as their average weekly wage. Additionally, the bill would deduct from the benefit amount owed to the service member by the State any federal benefits the service member, or their dependent, receives for a wound, injury, disease, illness, or death be. All service members would be required to sign an authorization consenting to the release of information regarding any federal compensation received in order for adjustments to State benefits to be made.

Medical Examination, Records, and Treatment

Exchange of Medical Records

The bill would require that, except for preliminary hearings conducted under KSA 44-534a, both parties or their attorneys shall arrange for the free exchange of all medical reports, including those made by treating and examining healthcare providers, upon receiving notice of the hearing date for a case. All medical records would be exchanged no less than 30 days prior to the hearing date. The bill would state failure by any party to comply would be grounds for the administrative law judge to grant a party's request for additional time to present evidence.

The bill would also provide additional requirements regarding the following topics:

- Documents to be included in the notice;
- Disputes of medical reports submitted as evidence;
- Submission of medical records as evidence in a hearing; and
- Testimony by treating or examining healthcare providers.

In the event the parties are utilizing the preliminary hearing process established in KSA 44-534a, the bill would require such exchange of medical records to occur no less than 20 days prior to the date of the preliminary hearing.

Neutral Medical Examination

The bill would authorize the administrative law judge to appoint a neutral health care provider to conduct a neutral health care examination should the parties not agree to a neutral health care examination or a neutral health care

provider prior to the prehearing settlement conference. The neutral health care provider would be required to be “of good standing and ability” and be required to address the diagnosis, treatment recommendations, and temporary restrictions of the injured employee. The bill would require the selected health care provider to issue a written report which would be admitted into evidence without additional foundation.

The bill would prohibit the appointed neutral health care provider from addressing the injured worker’s permanent restrictions, impairment, permanent partial disability, job task loss, wage loss, or permanent total disability in any written report unless the provider would be subsequently designated to be the authorized treating health care provider.

The bill would also allow any charges or costs incurred from the neutral health care provider due to unreasonable late cancellation or a missed appointment to be charged to the party responsible for the canceled or missed appointment.

Post-award Medical Benefits

The bill would amend the instances when an employer’s liability for an injured employee’s medical benefits would not terminate upon the employee reaching maximum medical improvement. Such employer liability would not terminate the employee’s medical benefits if the following conditions were met:

- The employee has undergone invasive or surgical procedures or an authorized treating health care provider recommends the employee would need an invasive or surgical procedure in the future, and evidence is provided that “it is more probably true than not” that future medical treatment will be needed after reaching maximum medical improvement; or

- There is “clear and convincing evidence” that the employee would need future medical treatment.

The bill would prohibit proceedings for post-award medical benefits from utilizing preliminary hearing procedures contained in KSA 44-534a.

The bill would require all applications made for a hearing on post-award medical benefits to specifically identify the post-award medical benefits being sought. If the benefits are provided within 30 days, no award of attorney fees would be made unless “clear and convincing evidence” is provided that the employee’s attorney expended significant time or resources to obtain the benefits.

Miscellaneous Provisions

Hearing Extension Limitation

The bill would remove, for claimants who have not reached maximum medical improvement, a prohibition on grants of extensions for claims that have not proceeded to a regular hearing, settlement hearing, or agreed award within three years of making the claim.

Medical Reference Guides

The bill would amend all references to the fourth edition of the American Medical Association Guides for Evaluation of Permanent Impairment to the sixth edition of the publication.

Notification of Injury

The bill would clarify an employee could notify their employer of an injury by accident or repetitive trauma either orally or in writing as provided by law.

The bill would also amend the timeframe in which an injured employee must notify their employer. An employee must notify their employer by the earliest of the following dates:

- Within 30 calendar days from the date of the accident or date of injury by repetitive trauma; or
- Within 20 calendar days after the employee's last day of employment with the employer.

[*Note:* State law requires notification within 20 calendar days from the date of injury, 20 calendar days from the date of medical treatment for the injury, or 10 calendar days after the employee's last day of employment with the employer.]

Records of Hearings

The bill would allow the Director of Worker's Compensation (Director) at the Kansas Department of Labor to record hearings by digital recording or other comparable means. Should this occur, the bill would require the recordings to be transcribed by either a certified shorthand reporter or notary public who would then attest to the accuracy of the transcript.

Settlements

The bill would allow for settlements to occur by settlement award on written stipulation by a form established by the Director, but only if both parties are represented by legal counsel and the claimant is over the age of 18.

Any settlement made in this manner would be required to be approved or rejected by the assigned administrative law judge within five business days of the electronic filing of the settlement award by the parties.

Workers Compensation Fund

The bill would allow the Workers Compensation Fund (Fund), when engaged in a lawsuit in which the Fund has reasonable belief the liability for the injured worker's benefits should be covered by a principal, to file an application to bring the principal as a party into the lawsuit. Any application made to the Fund to carry out such actions would be required to be heard within 60 days from the date the principal was notified of the Fund's application.

Definitions

The bill would amend the following definitions:

- “Functional Impairment” would utilize the sixth edition of the American Medical Association Guides to the Evaluation of Permanent Impairment instead of the fourth edition of the publication.
- “Money” would include sick, vacation, or other paid time off;
- “Workman”, “employee”, or “worker” would include “claimant” as an equivalent term;
- “Permanent total disability” would require the claimant to meet the following requirements:
 - Suffers impairment as established by competent medical evidence and based on the sixth edition of the American Medical Association Guides to the Evaluation of Permanent Impairment; and
 - Suffers a percentage of functional impairment determined to be caused solely by the injury that is equal to or exceeds 10.0 percent to the body as a whole or the overall functional impairment is equal to or exceeds 15.0

percent if there is a preexisting functional impairment;

- “Complete medical record” would be the report of a health care provider and include the provider’s qualifications, patient’s history, complaints, details of the findings of examinations, diagnosis, prognosis, nature of the impairment and disability, and an estimate of the percentage of permanent disability, if any; and
- “Registered mail” would be:
 - Registered mail or certified mail that provides a mailing receipt or is trackable and provides proof of receipt;
 - Electronic mail with proof that the electronic mail was delivered; or
 - Facsimile with proof of delivery.

Background

The bill was introduced by the Senate Committee on Commerce at the request of Senator Erickson.

Senate Committee on Commerce

In the Senate Committee hearing, **proponent** testimony was provided by representatives of Cooper Law Office, Kansas Chamber, Kansas Self-Insurance Association, Kansas Society for Human Resource Management, and the National Federation of Independent Businesses. The conferees generally stated the bill was a negotiated compromise between business and labor. The conferees requested the bill not be amended due to its negotiated nature.

Written-only proponent testimony was provided by Kansas AFL-CIO, Kansas Chamber, Kansas Department of

Labor, Kansas Self-Insurance Association, Kansas Society of Human Resource Management, Kansas Trial Lawyers Association, and National Federation of Independent Businesses.

No other testimony was provided.

Fiscal Information

No fiscal note was available at the time of the Senate Committee action.

Workers compensation, Kansas National Guard, benefits, maximum, commerce, labor, business; employees