

HOUSE BILL No. 2040

By Representative Carmichael

1-6

1 AN ACT concerning workers compensation; relating to disqualification for
2 benefits due to use of drugs; changing from a conclusive to a rebuttable
3 presumption of impairment based on drug test levels; removing the
4 presumption for marijuana; changing the standard of proof for
5 overcoming the presumption of contribution to injury based on
6 impairment; amending K.S.A. 2020 Supp. 44-501 and repealing the
7 existing section.

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

10 Section 1. K.S.A. 2020 Supp. 44-501 is hereby amended to read as
11 follows: 44-501. (a) (1) Compensation for an injury shall be disallowed
12 if ~~such~~ the injury to the employee results from:

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

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

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

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

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

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

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

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

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

	Confirmatory test cutoff levels (ng/ml)
14	
15	
16	
17	15
18	150
19	
20	2000
21	2000
22	10 ng/ml
23	25
24	
25	500
26	500

27 ~~+~~ *Delta-9 tetrahydrocannabinol-9-carboxylic acid.*
 28 ^{2/} *Benzoyllecgonine.*
 29 ³ ~~Specimen must also contain amphetamine at a concentration greater~~
 30 ~~than or equal to 200 ng/ml.~~

31 ⁴² *Test for 6-AM when morphine concentration exceeds 2,000 ng/ml.*

32 ³ *Specimen must also contain amphetamine at a concentration greater*
 33 *than or equal to 200 ng/ml.*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 course of the employee's regular employment.

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

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

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

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

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

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

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

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

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

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

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

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

25 Sec. 2. K.S.A. 2020 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.