

HOUSE BILL No. 2809

By Committee on Commerce and Labor

2-11

9 AN ACT concerning workers compensation; relating to liability of em-
10 ployers and other employees; amending K.S.A. 44-501 and repealing
11 the existing section.
12

13 *Be it enacted by the Legislature of the State of Kansas:*

14 Section 1. K.S.A. 44-501 is hereby amended to read as follows: 44-
15 501. (a) If in any employment to which the workers compensation act
16 applies, personal injury by accident arising out of and in the course of
17 employment is caused to an employee, the employer shall be liable to pay
18 compensation to the employee in accordance with the provisions of the
19 workers compensation act. In proceedings under the workers compen-
20 sation act, the burden of proof shall be on the claimant to establish the
21 claimant's right to an award of compensation and to prove the various
22 conditions on which the claimant's right depends. In determining whether
23 the claimant has satisfied this burden of proof, the trier of fact shall con-
24 sider the whole record.

25 (b) Except as provided in the workers compensation act, no em-
26 ployer, or other employee of such employer, shall be liable for any injury
27 for which compensation is recoverable under the workers compensation
28 act nor shall an employer be liable to any third party for any injury or
29 death of an employee which was caused under circumstances creating a
30 legal liability against a third party and for which workers compensation is
31 payable by such employer, *except that an employer shall be liable where*
32 *the injury, disability or death was contributed to by the employer's use*
33 *or consumption of alcohol or any drugs, chemicals or any other com-*
34 *pounds or substances including but not limited to, any drugs or medica-*
35 *tions which are available to the public without a prescription from a*
36 *health care provider, prescription drugs or medications, any form or type*
37 *of narcotic drugs, marijuana, stimulants, depressants or hallucinogens*
38 *subject to the same standards, conditions and limitations which are ap-*
39 *plicable to employees under subsection (d)(2).*

40 (c) The employee shall not be entitled to recover for the aggravation
41 of a preexisting condition, except to the extent that the work-related injury
42 causes increased disability. Any award of compensation shall be reduced
43 by the amount of functional impairment determined to be preexisting.

1 (d) (1) If the injury to the employee results from the employee’s
 2 deliberate intention to cause such injury; or from the employee’s willful
 3 failure to use a guard or protection against accident required pursuant to
 4 any statute and provided for the employee, or a reasonable and proper
 5 guard and protection voluntarily furnished the employee by the employer,
 6 any compensation in respect to that injury shall be disallowed.

7 (2) The employer shall not be liable under the workers compensation
 8 act where the injury, disability or death was contributed to by the em-
 9 ployee’s use or consumption of alcohol or any drugs, chemicals or any
 10 other compounds or substances, including but not limited to, any drugs
 11 or medications which are available to the public without a prescription
 12 from a health care provider, prescription drugs or medications, any form
 13 or type of narcotic drugs, marijuana, stimulants, depressants or hallucin-
 14 ogens. In the case of drugs or medications which are available to the
 15 public without a prescription from a health care provider and prescription
 16 drugs or medications, compensation shall not be denied if the employee
 17 can show that such drugs or medications were being taken or used in
 18 therapeutic doses and there have been no prior incidences of the em-
 19 ployee’s impairment on the job as the result of the use of such drugs or
 20 medications within the previous 24 months. It shall be conclusively pre-
 21 sumed that the employee was impaired due to alcohol or drugs if it is
 22 shown that at the time of the injury that the employee had an alcohol
 23 concentration of .04 or more, or a GCMS confirmatory test by quantita-
 24 tive analysis showing a concentration at or above the levels shown on the
 25 following chart for the drugs of abuse listed:

	Confirmatory test cutoff levels (ng/ml)
27 Marijuana metabolite ¹	15
28 Cocaine metabolite ²	150
29 Opiates:	
30 Morphine	2000
31 Codeine	2000
32 6-Acetylmorphine ⁴	10 ng/ml
33 Phencyclidine	25
34 Amphetamines:	
35 Amphetamine	500
36 Methamphetamine ³	500

37 ¹ Delta-9-tetrahydrocannabinol-9-carboxylic acid.

38 ² Benzoylcegonine.

39 ³ Specimen must also contain amphetamine at a concentration greater than or equal to 200
 40 ng/ml.

41 ⁴ Test for 6-AM when morphine concentration exceeds 2,000 ng/ml.

42 An employee’s refusal to submit to a chemical test shall not be admissible
 43 evidence to prove impairment unless there was probable cause to believe

1 that the employee used, possessed or was impaired by a drug or alcohol
2 while working. The results of a chemical test shall not be admissible ev-
3 idence to prove impairment unless the following conditions were met:

4 (A) There was probable cause to believe that the employee used, had
5 possession of, or was impaired by the drug or alcohol while working;

6 (B) the test sample was collected at a time contemporaneous with
7 the events establishing probable cause;

8 (C) the collecting and labeling of the test sample was performed by
9 or under the supervision of a licensed health care professional;

10 (D) the test was performed by a laboratory approved by the United
11 States department of health and human services or licensed by the de-
12 partment of health and environment, except that a blood sample may be
13 tested for alcohol content by a laboratory commonly used for that purpose
14 by state law enforcement agencies;

15 (E) the test was confirmed by gas chromatography-mass spectroscopy
16 or other comparably reliable analytical method, except that no such con-
17 firmation is required for a blood alcohol sample; and

18 (F) the foundation evidence must establish, beyond a reasonable
19 doubt, that the test results were from the sample taken from the em-
20 ployee.

21 (e) Compensation shall not be paid in case of coronary or coronary
22 artery disease or cerebrovascular injury unless it is shown that the exertion
23 of the work necessary to precipitate the disability was more than the
24 employee's usual work in the course of the employee's regular employ-
25 ment.

26 (f) Except as provided in the workers compensation act, no construc-
27 tion design professional who is retained to perform professional services
28 on a construction project or any employee of a construction design profes-
29 sional who is assisting or representing the construction design profes-
30 sional in the performance of professional services on the site of the con-
31 struction project, shall be liable for any injury resulting from the
32 employer's failure to comply with safety standards on the construction
33 project for which compensation is recoverable under the workers com-
34 pensation act, unless responsibility for safety practices is specifically as-
35 sumed by contract. The immunity provided by this subsection to any
36 construction design professional shall not apply to the negligent prepa-
37 ration of design plans or specifications.

38 (g) It is the intent of the legislature that the workers compensation
39 act shall be liberally construed for the purpose of bringing employers and
40 employees within the provisions of the act to provide the protections of
41 the workers compensation act to both. The provisions of the workers
42 compensation act shall be applied impartially to both employers and em-
43 ployees in cases arising thereunder.

1 (h) If the employee is receiving retirement benefits under the federal
2 social security act or retirement benefits from any other retirement sys-
3 tem, program or plan which is provided by the employer against which
4 the claim is being made, any compensation benefit payments which the
5 employee is eligible to receive under the workers compensation act for
6 such claim shall be reduced by the weekly equivalent amount of the total
7 amount of all such retirement benefits, less any portion of any such re-
8 tirement benefit, other than retirement benefits under the federal social
9 security act, that is attributable to payments or contributions made by the
10 employee, but in no event shall the workers compensation benefit be less
11 than the workers compensation benefit payable for the employee's per-
12 centage of functional impairment.

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

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