

SENATE Substitute for HOUSE BILL No. 2267

By Committee on Commerce

3-24

9 AN ACT concerning workers compensation; relating to work disability;
10 date of accident; amending K.S.A. 44-501 and K.S.A. 2003 Supp. 44-
11 508 and repealing the existing sections.
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.

32 (c) The employee shall not be entitled to recover for the aggravation
33 of a preexisting condition, except to the extent that the work-related injury
34 causes increased disability. ~~Any award of compensation shall be reduced~~
35 ~~by the amount of functional impairment determined to be preexisting~~
36 *functional impairment or work disability. Any award of compensation*
37 *shall be reduced by the percent of the functional impairment or work*
38 *disability determined to be preexisting or the amount the preexisting con-*
39 *dition, in the opinion of the physician, contributed to the disability re-*
40 *sulting from the work injury. The percentage of the preexisting functional*
41 *impairment, work disability or contribution from a preexisting condition*
42 *can be established by medical examination or opinion that occurs after*
43 *the date of the work-related injury. It is not necessary that the preexisting*

1 *condition has been symptomatic, has limited the worker's activities or*
 2 *abilities, or has been rated or ratable by a physician prior to the work-*
 3 *related injury to establish the percentage of the condition that, in the*
 4 *opinion of the physician, contributed to the disability resulting from the*
 5 *work-related injury that shall be used to reduce the award.*

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

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

Confirmatory test cutoff levels (ng/ml)	
32 Marijuana metabolite 1	15
33 Cocaine metabolite 2	150
34 Opiates:	2000
35 Morphine	
36 Codeine	2000
37 6-Acetylmorphine4	10 ng/ml
38 Phencyclidine	25
39 Amphetamines:	500
40 Amphetamine	
41 Methamphetamine 3	500

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 43

- 1 1 Delta-9-tetrahydrocannabinol-9-carboxylic acid.
2 2 Benzoylcegonine.
3 3 Specimen must also contain amphetamine at a concentration greater than or equal to
4 200 ng/ml.
5 4 Test for 6-AM when morphine concentration exceeds 2,000 ng/ml.
- 6 An employee's refusal to submit to a chemical test shall not be admissible
7 evidence to prove impairment unless there was probable cause to believe
8 that the employee used, possessed or was impaired by a drug or alcohol
9 while working. The results of a chemical test shall not be admissible ev-
10 idence to prove impairment unless the following conditions were met:
- 11 (A) There was probable cause to believe that the employee used, had
12 possession of, or was impaired by the drug or alcohol while working;
13 (B) the test sample was collected at a time contemporaneous with
14 the events establishing probable cause;
15 (C) the collecting and labeling of the test sample was performed by
16 or under the supervision of a licensed health care professional;
17 (D) the test was performed by a laboratory approved by the United
18 States department of health and human services or licensed by the de-
19 partment of health and environment, except that a blood sample may be
20 tested for alcohol content by a laboratory commonly used for that purpose
21 by state law enforcement agencies;
22 (E) the test was confirmed by gas chromatography-mass spectroscopy
23 or other comparably reliable analytical method, except that no such con-
24 firmation is required for a blood alcohol sample; and
25 (F) the foundation evidence must establish, beyond a reasonable
26 doubt, that the test results were from the sample taken from the em-
27 ployee.
- 28 (e) Compensation shall not be paid in case of coronary or coronary
29 artery disease or cerebrovascular injury unless it is shown that the exertion
30 of the work necessary to precipitate the disability was more than the
31 employee's usual work in the course of the employee's regular employ-
32 ment.
- 33 (f) Except as provided in the workers compensation act, no construc-
34 tion design professional who is retained to perform professional services
35 on a construction project or any employee of a construction design profes-
36 sional who is assisting or representing the construction design profes-
37 sional in the performance of professional services on the site of the con-
38 struction project, shall be liable for any injury resulting from the
39 employer's failure to comply with safety standards on the construction
40 project for which compensation is recoverable under the workers com-
41 pensation act, unless responsibility for safety practices is specifically as-
42 sumed by contract. The immunity provided by this subsection to any
43 construction design professional shall not apply to the negligent prepa-

1 ration of design plans or specifications.

2 (g) It is the intent of the legislature that the workers compensation
3 act shall be liberally construed for the purpose of bringing employers and
4 employees within the provisions of the act to provide the protections of
5 the workers compensation act to both. The provisions of the workers
6 compensation act shall be applied impartially to both employers and em-
7 ployees in cases arising thereunder.

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

20 Sec. 2. K.S.A. 2003 Supp. 44-508 is hereby amended to read as fol-
21 lows: 44-508. As used in the workers compensation act:

22 (a) "Employer" includes: (1) Any person or body of persons, corpo-
23 rate or unincorporate, and the legal representative of a deceased em-
24 ployer or the receiver or trustee of a person, corporation, association or
25 partnership; (2) the state or any department, agency or authority of the
26 state, any city, county, school district or other political subdivision or
27 municipality or public corporation and any instrumentality thereof; and
28 (3) for the purposes of community service work, the entity for which the
29 community service work is being performed and the governmental agency
30 which assigned the community service work, if any, if either such entity
31 or such governmental agency has filed a written statement of election
32 with the director to accept the provisions under the workers compensa-
33 tion act for persons performing community service work and in such case
34 such entity and such governmental agency shall be deemed to be the joint
35 employer of the person performing the community service work and both
36 shall have the rights, liabilities and immunities provided under the work-
37 ers compensation act for an employer with regard to the community serv-
38 ice work, except that the liability for providing benefits shall be imposed
39 only on the party which filed such election with the director, or on both
40 if both parties have filed such election with the director; for purposes of
41 community service work, "governmental agency" shall not include any
42 court or any officer or employee thereof and any case where there is
43 deemed to be a "joint employer" shall not be construed to be a case of

1 dual or multiple employment.

2 (b) “Workman” or “employee” or “worker” means any person who
3 has entered into the employment of or works under any contract of serv-
4 ice or apprenticeship with an employer. Such terms shall include but not
5 be limited to: Executive officers of corporations; professional athletes;
6 persons serving on a volunteer basis as duly authorized law enforcement
7 officers, attendants, as defined in subsection (d) of K.S.A. 65-6112 and
8 amendments thereto, drivers of ambulances as defined in subsection (b)
9 of K.S.A. 65-6112, and amendments thereto, firefighters, but only to the
10 extent and during such periods as they are so serving in such capacities;
11 persons employed by educational, religious and charitable organizations,
12 but only to the extent and during the periods that they are paid wages by
13 such organizations; persons in the service of the state, or any department,
14 agency or authority of the state, any city, school district, or other political
15 subdivision or municipality or public corporation and any instrumentality
16 thereof, under any contract of service, express or implied, and every of-
17 ficial or officer thereof, whether elected or appointed, while performing
18 official duties; persons in the service of the state as volunteer members
19 of the Kansas department of civil air patrol, but only to the extent and
20 during such periods as they are officially engaged in the performance of
21 functions specified in K.S.A. 48-3302 and amendments thereto; volun-
22 teers in any employment, if the employer has filed an election to extend
23 coverage to such volunteers; minors, whether such minors are legally or
24 illegally employed; and persons performing community service work, but
25 only to the extent and during such periods as they are performing com-
26 munity service work and if an election has been filed an election to extend
27 coverage to such persons. Any reference to an employee who has been
28 injured shall, where the employee is dead, include a reference to the
29 employee’s dependents, to the employee’s legal representatives, or, if the
30 employee is a minor or an incapacitated person, to the employee’s guard-
31 ian or conservator. Unless there is a valid election in effect which has
32 been filed as provided in K.S.A. 44-542a and amendments thereto, such
33 terms shall not include individual employers, limited liability company
34 members, partners or self-employed persons.

35 (c) (1) “Dependents” means such members of the employee’s family
36 as were wholly or in part dependent upon the employee at the time of
37 the accident.

38 (2) “Members of a family” means only surviving legal spouse and
39 children; or if no surviving legal spouse or children, then parents or grand-
40 parents; or if no parents or grandparents, then grandchildren; or if no
41 grandchildren, then brothers and sisters. In the meaning of this section,
42 parents include stepparents, children include stepchildren, grandchildren
43 include stepgrandchildren, brothers and sisters include stepbrothers and

1 stepsisters, and children and parents include that relation by legal adop-
2 tion. In the meaning of this section, a surviving spouse shall not be re-
3 garded as a dependent of a deceased employee or as a member of the
4 family, if the surviving spouse shall have for more than six months willfully
5 or voluntarily deserted or abandoned the employee prior to the date of
6 the employee's death.

7 (3) "Wholly dependent child or children" means:

8 (A) A birth child or adopted child of the employee except such a child
9 whose relationship to the employee has been severed by adoption;

10 (B) a stepchild of the employee who lives in the employee's house-
11 hold;

12 (C) any other child who is actually dependent in whole or in part on
13 the employee and who is related to the employee by marriage or consan-
14 guinity; or

15 (D) any child as defined in subsections (3)(A), (3)(B) or (3)(C) who
16 is less than 23 years of age and who is not physically or mentally capable
17 of earning wages in any type of substantial and gainful employment or
18 who is a full-time student attending an accredited institution of higher
19 education or vocational education.

20 (d) "Accident" means an undesigned, sudden and unexpected event
21 or events, usually of an afflictive or unfortunate nature and often, but not
22 necessarily, accompanied by a manifestation of force. The elements of an
23 accident, as stated herein, are not to be construed in a strict and literal
24 sense, but in a manner designed to effectuate the purpose of the workers
25 compensation act that the employer bear the expense of accidental injury
26 to a worker caused by the employment. *In cases where the accident occurs*
27 *as a result of a series of events, repetitive use, cumulative traumas or micro*
28 *traumas, the date of accident shall be the earliest of the following dates:*
29 *(1) The date upon which the employee gives written notice to the employer*
30 *of the injury; (2) the date the condition is diagnosed as work-related,*
31 *providing such fact is communicated in writing to the injured worker; or*
32 *(3) the first day the authorized physician takes the employee off work due*
33 *to the condition or restricts the employee from performing the work which*
34 *is the cause of the condition.*

35 (e) "Personal injury" and "injury" mean any lesion or change in the
36 physical structure of the body, causing damage or harm thereto, so that
37 it gives way under the stress of the worker's usual labor. It is not essential
38 that such lesion or change be of such character as to present external or
39 visible signs of its existence. An injury shall not be deemed to have been
40 directly caused by the employment where it is shown that the employee
41 suffers disability as a result of the natural aging process or by the normal
42 activities of day-to-day living.

43 (f) The words "arising out of and in the course of employment" as

1 used in the workers compensation act shall not be construed to include
2 injuries to the employee occurring while the employee is on the way to
3 assume the duties of employment or after leaving such duties, the prox-
4 imate cause of which injury is not the employer's negligence. An em-
5 ployee shall not be construed as being on the way to assume the duties
6 of employment or having left such duties at a time when the worker is
7 on the premises of the employer or on the only available route to or from
8 work which is a route involving a special risk or hazard and which is a
9 route not used by the public except in dealings with the employer. An
10 employee shall not be construed as being on the way to assume the duties
11 of employment, if the employee is a provider of emergency services re-
12 sponding to an emergency.

13 The words, "arising out of and in the course of employment" as used
14 in the workers compensation act shall not be construed to include injuries
15 to employees while engaged in recreational or social events under cir-
16 cumstances where the employee was under no duty to attend and where
17 the injury did not result from the performance of tasks related to the
18 employee's normal job duties or as specifically instructed to be performed
19 by the employer.

20 (g) "Burden of proof" means the burden of a party to persuade the
21 trier of facts by a preponderance of the credible evidence that such party's
22 position on an issue is more probably true than not true on the basis of
23 the whole record.

24 (h) "Director" means the director of workers compensation as pro-
25 vided for in K.S.A. 75-5708 and amendments thereto.

26 (i) "Health care provider" means any person licensed, by the proper
27 licensing authority of this state, another state or the District of Columbia,
28 to practice medicine and surgery, osteopathy, chiropractic, dentistry, op-
29 tometry, podiatry, audiology or psychology.

30 (j) "Secretary" means the secretary of human resources.

31 (k) "Construction design professional" means any person who is a
32 architect, professional engineer, landscape architect or land surveyor who
33 has been issued a license by the state board of technical professions to
34 practice such technical profession in Kansas or any corporation organized
35 to render professional services through the practice of one or more of
36 such technical professions in Kansas under the professional corporation
37 law of Kansas or any corporation issued a certificate of authorization un-
38 der K.S.A. 74-7036 and amendments thereto to practice one or more of
39 such technical professions in Kansas.

40 (l) "Community service work" means: (1) Public or community serv-
41 ice performed as a result of a contract of diversion or of assignment to a
42 community corrections program or conservation camp or suspension of
43 sentence or as a condition of probation or in lieu of a fine imposed by

1 court order; or (2) public or community service or other work performed
2 as a requirement for receipt of any kind of public assistance in accordance
3 with any program administered by the secretary of social and rehabilita-
4 tion services.

5 (m) "Utilization review" means the initial evaluation of appropriate-
6 ness in terms of both the level and the quality of health care and health
7 services provided a patient, based on accepted standards of the health
8 care profession involved. Such evaluation is accomplished by means of a
9 system which identifies the utilization of health care services above the
10 usual range of utilization for such services, which is based on accepted
11 standards of the health care profession involved, and which refers in-
12 stances of possible inappropriate utilization to the director for referral to
13 a peer review committee.

14 (n) "Peer review" means an evaluation by a peer review committee
15 of the appropriateness, quality and cost of health care and health services
16 provided a patient, which is based on accepted standards of the health
17 care profession involved and which is conducted in conjunction with util-
18 ization review.

19 (o) "Peer review committee" means a committee composed of health
20 care providers licensed to practice the same health care profession as the
21 health care provider who rendered the health care services being re-
22 viewed.

23 (p) "Group-funded self-insurance plan" includes each group-funded
24 workers compensation pool, which is authorized to operate in this state
25 under K.S.A. 44-581 through 44-592 and amendments thereto, each mun-
26 icipal group-funded pool under the Kansas municipal group-funded pool
27 act which is covering liabilities under the workers compensation act, and
28 any other similar group-funded or pooled plan or arrangement that pro-
29 vides coverage for employer liabilities under the workers compensation
30 act and is authorized by law.

31 (q) On and after the effective date of this act, "workers compensation
32 board" or "board" means the workers compensation board established
33 under K.S.A. 44-555c and amendments thereto.

34 (r) "Usual charge" means the amount most commonly charged by
35 health care providers for the same or similar services.

36 (s) "Customary charge" means the usual rates or range of fees
37 charged by health care providers in a given locale or area.

38 Sec. 3. K.S.A. 44-501 and K.S.A. 2003 Supp. 44-508 are hereby re-
39 pealed.

40 Sec. 4. This act shall take effect and be in force from and after its
41 publication in the statute book.