

**HOUSE BILL No. 2041**

By Representative Carmichael

1-7

1 AN ACT concerning workers compensation; relating to benefit reductions  
2 due to retirement benefits; amending K.S.A. 2020 Supp. 44-501 and  
3 repealing the existing section.

4  
5 *Be it enacted by the Legislature of the State of Kansas:*

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

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

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

13 (C) the employee's willful failure to use a reasonable and proper  
14 guard and protection voluntarily furnished to the employee by the  
15 employer;

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

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

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

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

33 (B) In the case of drugs or medications ~~which~~ that are available to the  
34 public without a prescription from a health care provider and prescription  
35 drugs or medications, compensation shall not be denied if the employee  
36 can show that ~~such~~ the drugs or medications were being taken or used in

1 therapeutic doses and there have been no prior incidences of the  
2 employee's impairment on the job as the result of the use of ~~such~~ the drugs  
3 or medications within the previous 24 months.

4 (C) It shall be conclusively presumed that the employee was impaired  
5 due to alcohol or drugs if it is shown that, at the time of the injury, the  
6 employee had an alcohol concentration of ~~0.04~~ 0.04 or more, or a GCMS  
7 confirmatory test by quantitative analysis showing a concentration at or  
8 above the levels shown on the following chart for the drugs of abuse listed:

	Confirmatory test cutoff levels (ng/ml)
12 Marijuana metabolite <sup>1</sup> .....	15
13 Cocaine metabolite <sup>2</sup> .....	150
14 Opiates:	
15     Morphine .....	2000
16     Codeine .....	2000
17 6-Acetylmorphine <sup>4</sup> .....	10 ng/ml
18 Phencyclidine .....	.25
19 Amphetamines:	
20     Amphetamine .....	500
21     Methamphetamine <sup>3</sup> .....	500

22 <sup>1</sup> Delta-9-tetrahydrocannabinol-9-carboxylic acid.

23 <sup>2</sup> Benzoylcegonine.

24 <sup>3</sup> Specimen must also contain amphetamine at a concentration greater  
25 than or equal to 200 ng/ml.

26 <sup>4</sup> Test for 6-AM when morphine concentration exceeds 2,000 ng/ml.

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

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

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

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

43 (B) during an autopsy or in the normal course of medical treatment

1 for reasons related to the health and welfare of the injured worker and not  
2 at the direction of the employer;

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

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

9 (E) as a result of federal or state law or a federal or state rule or  
10 regulation having the force and effect of law requiring a post-injury testing  
11 program and ~~such~~ *the* required program was properly implemented at the  
12 time of testing.

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

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

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

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

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

28 (E) the foundation evidence must establish, beyond a reasonable  
29 doubt, that the test results were from the sample taken from the employee;  
30 and

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

33 (c) (1) Except as provided in paragraph (2), compensation shall not  
34 be paid in case of coronary or coronary artery disease or cerebrovascular  
35 injury unless it is shown that the exertion of the work necessary to  
36 precipitate the disability was more than the employee's usual work in the  
37 course of the employee's regular employment.

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

43 (A) The injury can be identified as caused by a specific event

1 occurring in the course and scope of employment;

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

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

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

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

23 (1) Where workers compensation benefits have previously been  
24 awarded through settlement or judicial or administrative determination in  
25 Kansas, the percentage basis of the prior settlement or award shall  
26 conclusively establish the amount of functional impairment determined to  
27 be preexisting. Where workers compensation benefits have not previously  
28 been awarded through settlement or judicial or administrative  
29 determination in Kansas, the amount of preexisting functional impairment  
30 shall be established by competent evidence.

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

33 (A) If the preexisting impairment is the result of injury sustained  
34 while working for the employer against whom workers compensation  
35 benefits are currently being sought, any award of compensation shall be  
36 reduced by the current dollar value attributable under the workers  
37 compensation act to the percentage of functional impairment determined to  
38 be preexisting. The "current dollar value" shall be calculated by  
39 multiplying the percentage of preexisting impairment by the compensation  
40 rate in effect on the date of the accident or injury against which the  
41 reduction will be applied.

42 (B) In all other cases, the employer against whom benefits are  
43 currently being sought shall be entitled to a credit for the percentage of

1 preexisting impairment.

2 (f)(1) If the employee ~~receives~~ *begins receiving*, whether periodically  
3 or by lump sum, retirement benefits under the federal social security act ~~or~~  
4 ~~retirement benefits from any other retirement system, program, policy or~~  
5 ~~plan which is provided by the employer against which the claim is being~~  
6 ~~made after a work-related accident~~, any compensation ~~benefit payments~~  
7 ~~which for permanent disability~~ that the employee is eligible to receive  
8 under the workers compensation act ~~for such~~ the claim shall be reduced by  
9 the weekly equivalent amount of the ~~total amount of all such~~ federal social  
10 security retirement benefits, ~~less any portion of any such~~.

11 (2) *If the employee begins receiving retirement benefit benefits after*  
12 *the accident that are funded by the employer against whom the claim is*  
13 *being made*, other than retirement benefits under the federal social security  
14 act, any compensation benefit payments for permanent disability that the  
15 employee is eligible to receive under the workers compensation act for the  
16 claim shall be reduced by the weekly equivalent amount of the total  
17 amount of such retirement benefits. *No portion of such retirement benefits*  
18 *that is are* attributable to payments or contributions made by the employee;  
19 ~~but in no event shall the~~ shall be subject to this reduction.

20 (3) *Whether the employee receives retirement benefits under the*  
21 *federal social security act or through any other retirement plan*, workers  
22 compensation ~~benefit~~ *benefits for permanent disability shall not* be less  
23 than the workers compensation benefit payable for the employee's  
24 percentage of functional impairment.

25 (4) Where the employee elects to take retirement benefits in a lump  
26 sum, the lump sum payment shall be amortized at the rate of 4% per year  
27 over the employee's life expectancy to determine the weekly equivalent  
28 value of the benefits.

29 Sec. 2. K.S.A. 2020 Supp. 44-501 is hereby repealed.

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