

SENATE BILL No. 189

By Senator Holland

2-9

1 AN ACT concerning workers compensation; relating to use of the fourth
2 edition of the AMA medical guides for the determination of
3 impairment; amending K.S.A. 2020 Supp. 44-510d and 44-510e and
4 repealing the existing sections.

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

7 Section 1. K.S.A. 2020 Supp. 44-510d is hereby amended to read as
8 follows: 44-510d. (a) Where disability, partial in character but permanent
9 in quality, results from the injury, the injured employee shall be entitled to
10 the compensation provided in K.S.A. 44-510h and 44-510i, and
11 amendments thereto. The injured employee may be entitled to payment of
12 temporary total disability as defined in K.S.A. 44-510c, and amendments
13 thereto, or temporary partial disability as defined in ~~subsection (a)(1) of~~
14 K.S.A. 44-510e(a)(1), and amendments thereto, provided that the injured
15 employee shall not be entitled to any other or further compensation for or
16 during the first week following the injury unless such disability exists for
17 three consecutive weeks, in which event compensation shall be paid for
18 the first week. Thereafter compensation shall be paid for temporary total or
19 temporary partial disability as provided in the following schedule, 66²/₃%
20 of the average weekly wages to be computed as provided in K.S.A. 44-
21 511, and amendments thereto, except that in no case shall the weekly
22 compensation be more than the maximum as provided for in K.S.A. 44-
23 510c, and amendments thereto.

24 (b) If there is an award of permanent disability as a result of the
25 injury there shall be a presumption that disability existed immediately after
26 the injury and compensation is to be paid for not to exceed the number of
27 weeks allowed in the following schedule:

- 28 (1) For loss of a thumb, 60 weeks.
29 (2) For the loss of a first finger, commonly called the index finger, 37
30 weeks.
31 (3) For the loss of a second finger, 30 weeks.
32 (4) For the loss of a third finger, 20 weeks.
33 (5) For the loss of a fourth finger, commonly called the little finger,
34 15 weeks.
35 (6) Loss of the first phalange of the thumb or of any finger shall be
36 considered to be equal to the loss of 1/2 of such thumb or finger, and the

1 compensation shall be $\frac{1}{2}$ of the amount specified above. The loss of the
2 first phalange and any part of the second phalange of any finger, which
3 includes the loss of any part of the bone of such second phalange, shall be
4 considered to be equal to the loss of $\frac{2}{3}$ of such finger and the
5 compensation shall be $\frac{2}{3}$ of the amount specified above. The loss of the
6 first phalange and any part of the second phalange of a thumb, which
7 includes the loss of any part of the bone of such second phalange, shall be
8 considered to be equal to the loss of the entire thumb. The loss of the first
9 and second phalanges, and any part of the third proximal phalange of any
10 finger, shall be considered as the loss of the entire finger. Amputation
11 through the joint shall be considered a loss to the next higher schedule.

12 (7) For the loss of a great toe, 30 weeks.

13 (8) For the loss of any toe other than the great toe, 10 weeks.

14 (9) The loss of the first phalange of any toe shall be considered to be
15 equal to the loss of $\frac{1}{2}$ of such toe and the compensation shall be $\frac{1}{2}$ of the
16 amount above specified.

17 (10) The loss of more than one phalange of a toe shall be considered to
18 be equal to the loss of the entire toe.

19 (11) For the loss of a hand, 150 weeks.

20 (12) For the loss of a forearm, 200 weeks.

21 (13) For the loss of an arm, excluding the shoulder joint, shoulder
22 girdle, shoulder musculature or any other shoulder structures, 210 weeks,
23 and for the loss of an arm, including the shoulder joint, shoulder girdle,
24 shoulder musculature or any other shoulder structures, 225 weeks.

25 (14) For the loss of a foot, 125 weeks.

26 (15) For the loss of a lower leg, 190 weeks.

27 (16) For the loss of a leg, 200 weeks.

28 (17) For the loss of an eye, or the complete loss of the sight thereof,
29 120 weeks.

30 (18) Amputation or severance below the wrist shall be considered as
31 the loss of a hand. Amputation at the wrist and below the elbow shall be
32 considered as the loss of the forearm. Amputation at or above the elbow
33 shall be considered loss of the arm. Amputation below the ankle shall be
34 considered loss of the foot. Amputation at the ankle and below the knee
35 shall be considered as loss of the lower leg. Amputation at or above the
36 knee shall be considered as loss of the leg.

37 (19) For the complete loss of hearing of both ears, 110 weeks.

38 (20) For the complete loss of hearing of one ear, 30 weeks.

39 (21) Permanent loss of the use of a finger, thumb, hand, shoulder,
40 arm, forearm, toe, foot, leg or lower leg or the permanent loss of the sight
41 of an eye or the hearing of an ear, shall be equivalent to the loss thereof.
42 For the permanent partial loss of the use of a finger, thumb, hand,
43 shoulder, arm, toe, foot or leg, or the sight of an eye or the hearing of an

1 ear, compensation shall be paid as provided for in K.S.A. 44-510c, and
2 amendments thereto, per week during that proportion of the number of
3 weeks in the foregoing schedule provided for the loss of such finger,
4 thumb, hand, shoulder, arm, toe, foot or leg or the sight of an eye or the
5 hearing of an ear, which partial loss thereof bears to the total loss of a
6 finger, thumb, hand, shoulder, arm, toe, foot or leg, or the sight of an eye
7 or the hearing of an ear; but in no event shall the compensation payable
8 hereunder for such partial loss exceed the compensation payable under the
9 schedule for the total loss of such finger, thumb, hand, arm, toe, foot or
10 leg, or the sight of an eye or the hearing of an ear, exclusive of the healing
11 period. As used in this paragraph ~~(21)~~, "shoulder" means the shoulder
12 joint, shoulder girdle, shoulder musculature or any other shoulder
13 structures.

14 (22) For traumatic hernia, compensation shall be limited to the
15 compensation under K.S.A. 44-510h and 44-510i, and amendments
16 thereto, compensation for temporary total disability during such period of
17 time as such employee is actually unable to work on account of such
18 hernia, and, in the event such hernia is inoperable, weekly compensation
19 during 12 weeks, except that, in the event that such hernia is operable, the
20 unreasonable refusal of the employee to submit to an operation for surgical
21 repair of such hernia shall deprive such employee of any benefits under the
22 workers compensation act.

23 (23) Loss of or loss of use of a scheduled member shall be based
24 upon permanent impairment of function to the scheduled member as
25 determined using the fourth edition of the American medical association
26 guides to the evaluation of permanent impairment, if the impairment is
27 contained therein, ~~until January 1, 2015, but for injuries occurring on and~~
28 ~~after January 1, 2015, shall be determined by using the sixth edition of the~~
29 ~~American medical association guides to the evaluation of permanent~~
30 ~~impairment, if the impairment is contained therein.~~

31 (24) Where an injury results in the loss of or loss of use of more than
32 one scheduled member within a single extremity, the functional
33 impairment attributable to each scheduled member shall be combined
34 pursuant to the fourth edition of the American medical association guides
35 for evaluation of permanent impairment ~~until January 1, 2015, but for~~
36 ~~injuries occurring on and after January 1, 2015, shall be combined~~
37 ~~pursuant to the sixth edition of the American medical association guides to~~
38 ~~the evaluation of permanent impairment, and compensation awarded shall~~
39 ~~be calculated to the highest scheduled member actually impaired.~~

40 (c) Whenever the employee is entitled to compensation for a specific
41 injury under the foregoing schedule, the same shall be exclusive of all
42 other compensation except the benefits provided in K.S.A. 44-510h and
43 44-510i, and amendments thereto, and no additional compensation shall be

1 allowable or payable for any temporary or permanent, partial or total
2 disability, except that the director, in proper cases, may allow additional
3 compensation during the actual healing period, following amputation. The
4 healing period shall not be more than 10% of the total period allowed for
5 the scheduled injury in question nor in any event for longer than 15 weeks.
6 The return of the employee to the employee's usual occupation shall
7 terminate the healing period.

8 (d) The amount of compensation for permanent partial disability
9 under this section shall be determined by multiplying the payment rate by
10 the weeks payable. As used in this section:

11 (1) Payment rate shall be the lesser of: (A) The amount determined by
12 multiplying the average weekly wage of the worker prior to such injury by
13 $66\frac{2}{3}\%$; or (B) the maximum provided in K.S.A. 44-510c, and amendments
14 thereto;

15 (2) weeks payable shall be determined as follows: (A) Determine the
16 weeks of benefits provided for the injury on schedule; (B) determine the
17 weeks of temporary compensation paid by adding the amounts of
18 temporary total and temporary partial disability compensation paid and
19 dividing the sum by the payment rate above; (C) subtract the weeks of
20 temporary compensation calculated in *subsection* (d)(2)(B) from the weeks
21 of benefits provided for the injury as determined in *subsection* (d)(2)(A);
22 and (D) multiply the weeks as determined in *subsection* (d)(2)(C) by the
23 percentage of permanent partial impairment of function as determined
24 under *subsection* (b)(23).

25 The resulting award shall be paid for the number of weeks at the
26 payment rate until fully paid or modified. Under no circumstances shall
27 the period of permanent partial disability run concurrently with the period
28 of temporary total or temporary partial disability.

29 Sec. 2. K.S.A. 2020 Supp. 44-510e is hereby amended to read as
30 follows: 44-510e. (a) In case of whole body injury resulting in temporary
31 or permanent partial general disability not covered by the schedule in
32 K.S.A. 44-510d, and amendments thereto, the employee shall receive
33 weekly compensation as determined in this subsection during the period of
34 temporary or permanent partial general disability not exceeding a
35 maximum of 415 weeks.

36 (1) Weekly compensation for temporary partial general disability
37 shall be $66\frac{2}{3}\%$ of the difference between the average weekly wage that the
38 employee was earning prior to the date of injury and the amount the
39 employee is actually earning after such injury in any type of employment.
40 In no case shall such weekly compensation exceed the maximum as
41 provided for in K.S.A. 44-510c, and amendments thereto.

42 (2) (A) Permanent partial general disability exists when the employee
43 is disabled in a manner ~~which~~ *that* is partial in character and permanent in

1 quality and ~~which~~ *that* is not covered by the schedule in K.S.A. 44-510d,
 2 and amendments thereto. Compensation for permanent partial general
 3 disability shall also be paid as provided in this section where an injury
 4 results in:

5 (i) The loss of or loss of use of a shoulder, arm, forearm or hand of
 6 one upper extremity, combined with the loss of or loss of use of a shoulder,
 7 arm, forearm or hand of the other upper extremity;

8 (ii) the loss of or loss of use of a leg, lower leg or foot of one lower
 9 extremity, combined with the loss of or loss of use of a leg, lower leg or
 10 foot of the other lower extremity; or

11 (iii) the loss of or loss of use of both eyes.

12 (B) The extent of permanent partial general disability shall be the
 13 percentage of functional impairment the employee sustained on account of
 14 the injury as established by competent medical evidence and based on the
 15 fourth edition of the American medical association guides to the evaluation
 16 of permanent impairment, if the impairment is contained therein, ~~until~~
 17 ~~January 1, 2015, but for injuries occurring on and after January 1, 2015,~~
 18 ~~based on the sixth edition of the American medical association guides to~~
 19 ~~the evaluation of permanent impairment, if the impairment is contained~~
 20 ~~therein.~~

21 (C) An employee may be eligible to receive permanent partial general
 22 disability compensation in excess of the percentage of functional
 23 impairment ~~(, "work disability"),~~ if:

24 (i) The percentage of functional impairment determined to be caused
 25 solely by the injury exceeds 7½% to the body as a whole or the overall
 26 functional impairment is equal to or exceeds 10% to the body as a whole
 27 in cases where there is preexisting functional impairment; and

28 (ii) the employee sustained a post-injury wage loss, as defined in
 29 ~~subsection (a)(2)(E) of K.S.A. 44-510e(a)(2)(E),~~ and amendments thereto,
 30 of at least 10% ~~which~~ *that* is directly attributable to the work injury and
 31 not to other causes or factors.

32 In such cases, the extent of work disability is determined by averaging
 33 together the percentage of post-injury task loss demonstrated by the
 34 employee to be caused by the injury and the percentage of post-injury
 35 wage loss demonstrated by the employee to be caused by the injury.

36 (D) "Task loss" ~~shall mean~~ *means* the percentage to which the
 37 employee, in the opinion of a licensed physician, has lost the ability to
 38 perform the work tasks that the employee performed in any substantial
 39 gainful employment during the five-year period preceding the injury. The
 40 permanent restrictions imposed by a licensed physician as a result of the
 41 work injury shall be used to determine those work tasks ~~which~~ *that*
 42 the employee has lost the ability to perform. If the employee has preexisting
 43 permanent restrictions, any work tasks ~~which~~ *that* the employee would

1 have been deemed to have lost the ability to perform, had a task loss
2 analysis been completed prior to the injury at issue, shall be excluded for
3 the purposes of calculating the task loss ~~which~~ that is directly attributable
4 to the current injury.

5 (E) "Wage loss" ~~shall mean~~ means the difference between the average
6 weekly wage the employee was earning at the time of the injury and the
7 average weekly wage the employee is capable of earning after the injury.
8 The capability of a worker to earn post-injury wages shall be established
9 based upon a consideration of all factors, including, but not limited to, the
10 injured worker's age, physical capabilities, education and training, prior
11 experience, and availability of jobs in the open labor market. The
12 administrative law judge shall impute an appropriate post-injury average
13 weekly wage based on such factors. Where the employee is engaged in
14 post-injury employment for wages, there shall be a rebuttable presumption
15 that the average weekly wage an injured worker is actually earning
16 constitutes the post-injury average weekly wage that the employee is
17 capable of earning. The presumption may be overcome by competent
18 evidence.

19 (i) To establish post-injury wage loss, the employee must have the
20 legal capacity to enter into a valid contract of employment. Wage loss
21 caused by voluntary resignation or termination for cause shall in no way
22 be construed to be caused by the injury.

23 (ii) The actual or projected weekly value of any employer-paid fringe
24 benefits are to be included as part of the worker's post-injury average
25 weekly wage and shall be added to the wage imputed by the administrative
26 law judge pursuant to K.S.A. 44-510e(a)(2)(E), and amendments thereto.

27 (iii) The injured worker's refusal of accommodated employment
28 within the worker's medical restrictions as established by the authorized
29 treating physician and at a wage equal to 90% or more of the pre-injury
30 average weekly wage shall result in a rebuttable presumption of no wage
31 loss.

32 (F) The amount of compensation for whole body injury under this
33 section shall be determined by multiplying the payment rate by the weeks
34 payable. As used in this section:

35 ~~(1)~~(i) The payment rate shall be the lesser of:

36 ~~(A)~~(a) The amount determined by multiplying the average weekly
37 wage of the worker prior to such injury by $66\frac{2}{3}\%$; or

38 ~~(B)~~(b) the maximum provided in K.S.A. 44-510c, and amendments
39 thereto;

40 ~~(2)~~(ii) weeks payable shall be determined as follows:

41 ~~(A)~~(a) Determine the weeks of temporary compensation paid by
42 adding the amounts of temporary total and temporary partial disability
43 compensation paid and dividing the sum by the payment rate above;

1 ~~(B)~~(b) subtract from 415 weeks the total number of weeks of
2 temporary compensation paid as determined in *subparagraph* (F)(2)(A)(ii)
3 (a), excluding the first 15 such weeks; and

4 ~~(B)~~(iii) multiply the number of weeks as determined in *subparagraph*
5 (F)(2)(B)(ii)(b) by the percentage of functional impairment pursuant to
6 subsection (a)(2)(B) or the percentage of work disability pursuant to
7 subsection (a)(2)(C), whichever is applicable.

8 (3) When an injured worker is eligible to receive an award of work
9 disability, compensation is limited to the value of the work disability as
10 calculated above. In no case shall functional impairment and work
11 disability be awarded together.

12 The resulting award shall be paid for the number of disability weeks at
13 the payment rate until fully paid or modified. In any case of permanent
14 partial disability under this section, the employee shall be paid
15 compensation for not to exceed 415 weeks following the date of such
16 injury. If there is an award of permanent disability as a result of the
17 compensable injury, there shall be a presumption that disability existed
18 immediately after such injury. Under no circumstances shall the period of
19 permanent partial disability run concurrently with the period of temporary
20 total or temporary partial disability.

21 (b) If an employee has sustained an injury for which compensation is
22 being paid, and the employee's death is caused by other and independent
23 causes, any payment of compensation already due the employee at the
24 time of death and then unpaid shall be paid to the employee's dependents
25 directly or to the employee's legal representatives if the employee left no
26 dependent, but the liability of the employer for the payments of
27 compensation not yet due at the time of the death of such employee shall
28 cease and be abrogated by the employee's death.

29 (c) The total amount of compensation that may be allowed or
30 awarded an injured employee for all injuries received in any one accident
31 shall in no event exceed the compensation ~~which~~ *that* would be payable
32 under the workers compensation act for 100% permanent total disability
33 resulting from such accident.

34 (d) Where a minor employee or a minor employee's dependents are
35 entitled to compensation under the workers compensation act, such
36 compensation shall be exclusive of all other remedies or causes of action
37 for such injury or death, and no claim or cause of action against the
38 employer shall inure or accrue to or exist in favor of the parent or parents
39 of such minor employee on account of any damage resulting to such parent
40 or parents on account of the loss of earnings or loss of service of such
41 minor employee.

42 (e) In any case of injury to or death of an employee, where the
43 employee or the employee's dependents are entitled to compensation under

1 the workers compensation act, such compensation shall be exclusive of all
2 other remedies or causes of action for such injury or death, and no claim or
3 action shall inure, accrue to or exist in favor of the surviving spouse or any
4 relative or next of kin of such employee against such employer on account
5 of any damage resulting to such surviving spouse or any relative or next of
6 kin on account of the loss of earnings, services, or society of such
7 employee or on any other account resulting from or growing out of the
8 injury or death of such employee.

9 New Sec. 3. If any provision of this act is held invalid or
10 unconstitutional, it shall be conclusively presumed that the legislature
11 would have enacted the remainder of this act without such invalid or
12 unconstitutional provision or section.

13 Sec. 4. K.S.A. 2020 Supp. 44-510d and 44-510e are hereby repealed.

14 Sec. 5. This act shall take effect and be in force from and after its
15 publication in the statute book.