

HOUSE BILL No. 2637

By Representative Carmichael

2-8

1 AN ACT concerning workers compensation; relating to medical guides for
2 the determination of permanent impairment; amending K.S.A. 2015
3 Supp. 44-510d and 44-510e and repealing the existing sections.
4

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

6 Section 1. K.S.A. 2015 Supp. 44-510d is hereby amended to read as
7 follows: 44-510d.(a) Where disability, partial in character but permanent in
8 quality, results from the injury, the injured employee shall be entitled to the
9 compensation provided in K.S.A. 44-510h and 44-510i, and amendments
10 thereto. The injured employee may be entitled to payment of temporary
11 total disability as defined in K.S.A. 44-510c, and amendments thereto, or
12 temporary partial disability as defined in ~~subsection (a)(1)~~ of K.S.A. 44-
13 510e(a)(1), and amendments thereto, provided that the injured employee
14 shall not be entitled to any other or further compensation for or during the
15 first week following the injury unless such disability exists for three
16 consecutive weeks, in which event compensation shall be paid for the first
17 week. Thereafter compensation shall be paid for temporary total or
18 temporary partial disability as provided in the following schedule, 66²/₃%
19 of the average weekly wages to be computed as provided in K.S.A. 44-
20 511, and amendments thereto, except that in no case shall the weekly
21 compensation be more than the maximum as provided for in K.S.A. 44-
22 510c, and amendments thereto.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

38 (21) Permanent loss of the use of a finger, thumb, hand, shoulder,
39 arm, forearm, toe, foot, leg or lower leg or the permanent loss of the sight
40 of an eye or the hearing of an ear, shall be equivalent to the loss thereof.
41 For the permanent partial loss of the use of a finger, thumb, hand,
42 shoulder, arm, toe, foot or leg, or the sight of an eye or the hearing of an
43 ear, compensation shall be paid as provided for in K.S.A. 44-510c, and

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

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

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

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

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

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

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

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

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

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

28 Sec. 2. K.S.A. 2015 Supp. 44-510e is hereby amended to read as
29 follows: 44-510e. (a) In case of whole body injury resulting in temporary
30 or permanent partial general disability not covered by the schedule in
31 K.S.A. 44-510d, and amendments thereto, the employee shall receive
32 weekly compensation as determined in this subsection during the period of
33 temporary or permanent partial general disability not exceeding a
34 maximum of 415 weeks.

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

41 (2) (A) Permanent partial general disability exists when the employee
42 is disabled in a manner which is partial in character and permanent in
43 quality and which is not covered by the schedule in K.S.A. 44-510d, and

1 amendments thereto. Compensation for permanent partial general
2 disability shall also be paid as provided in this section where an injury
3 results in:

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

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

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

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

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

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

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

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

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

1 prior to the injury at issue, shall be excluded for the purposes of
2 calculating the task loss which is directly attributable to the current injury.

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

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

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

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

30 (F) The amount of compensation for whole body injury under this
31 section shall be determined by multiplying the payment rate by the weeks
32 payable. As used in this section: (1) The payment rate shall be the lesser
33 of: (A) The amount determined by multiplying the average weekly wage
34 of the worker prior to such injury by $66\frac{2}{3}\%$; or (B) the maximum provided
35 in K.S.A. 44-510c, and amendments thereto; (2) weeks payable shall be
36 determined as follows: (A) Determine the weeks of temporary
37 compensation paid by adding the amounts of temporary total and
38 temporary partial disability compensation paid and dividing the sum by the
39 payment rate above; (B) subtract from 415 weeks the total number of
40 weeks of temporary compensation paid as determined in *subparagraph* (F)
41 (2)(A), excluding the first 15 such weeks; and (3) multiply the number of
42 weeks as determined in *subparagraph* (F)(2)(B) by the percentage of
43 functional impairment pursuant to subsection (a)(2)(B) or the percentage

1 of work disability pursuant to subsection (a)(2)(C), whichever is
2 applicable.

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

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

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

24 (c) The total amount of compensation that may be allowed or
25 awarded an injured employee for all injuries received in any one accident
26 shall in no event exceed the compensation which would be payable under
27 the workers compensation act for 100% permanent total disability
28 resulting from such accident.

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

37 (e) In any case of injury to or death of an employee, where the
38 employee or the employee's dependents are entitled to compensation under
39 the workers compensation act, such compensation shall be exclusive of all
40 other remedies or causes of action for such injury or death, and no claim or
41 action shall inure, accrue to or exist in favor of the surviving spouse or any
42 relative or next of kin of such employee against such employer on account
43 of any damage resulting to such surviving spouse or any relative or next of

1 kin on account of the loss of earnings, services, or society of such
2 employee or on any other account resulting from or growing out of the
3 injury or death of such employee.

4 New Sec. 3. If any clause, paragraph, subsection or section of this act
5 is held invalid or unconstitutional, it shall be conclusively presumed that
6 the legislature would have enacted the remainder of this act without such
7 invalid or unconstitutional clause, paragraph, subsection or section.

8 Sec. 4. K.S.A. 2015 Supp. 44-510d and 44-510e are hereby repealed.

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