

SENATE BILL No. 146

By Senators Holland, Bollier, Faust-Goudeau, Francisco, Hawk, Hensley, Miller and Ware

2-11

1 AN ACT concerning workers compensation; relating to benefit reductions
2 due to retirement benefits; amending K.S.A. 2018 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. 2018 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 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 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

1 can show that ~~such~~ the drugs or medications were being taken or used in
 2 therapeutic doses and there have been no prior incidences of the
 3 employee's impairment on the job as the result of the use of ~~such~~ the drugs
 4 or medications within the previous 24 months.

5 (C) It shall be conclusively presumed that the employee was impaired
 6 due to alcohol or drugs if it is shown that, at the time of the injury, the
 7 employee had an alcohol concentration of .04 or more, or a GCMS
 8 confirmatory test by quantitative analysis showing a concentration at or
 9 above the levels shown on the following chart for the drugs of abuse listed:

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

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

24 ² Benzoylcegonine.

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

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

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

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

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

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

1 (B) during an autopsy or in the normal course of medical treatment
2 for reasons related to the health and welfare of the injured worker and not
3 at the direction of the employer;

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

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

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

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

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

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

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

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

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

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

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

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

1 (A) The injury can be identified as caused by a specific event
2 occurring in the course and scope of employment;

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

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

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

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

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

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

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

43 (B) In all other cases, the employer against whom benefits are

1 currently being sought shall be entitled to a credit for the percentage of
2 preexisting impairment.

3 (f) If the employee receives, whether periodically or by lump sum,
4 retirement benefits *other than retirement benefits* under the federal social
5 security act ~~or retirement benefits from any other retirement system,
6 program, policy or plan which is~~ *that are provided and funded* by the
7 employer against which the claim is being made, any compensation benefit
8 payments ~~which for permanent disability that~~ the employee is eligible to
9 receive under the workers compensation act for ~~such~~ *the* claim shall be
10 reduced by the weekly equivalent amount of the total amount of ~~all such~~
11 *the* retirement benefits *other than retirement benefits under the social*
12 *security act, that are provided and funded by the employer,* less any portion
13 of ~~any such the~~ retirement benefit, ~~other than retirement benefits under the~~
14 ~~federal social security act,~~ *benefits that is are* attributable to payments or
15 contributions made by the employee, but in no event shall the workers
16 compensation benefit be less than the workers compensation benefit
17 payable for the employee's percentage of functional impairment. Where
18 the employee elects to take retirement benefits in a lump sum, the lump
19 sum payment shall be amortized at the rate of 4% per year over the
20 employee's life expectancy to determine the weekly equivalent value of the
21 benefits.

22 Sec. 2. K.S.A. 2018 Supp. 44-501 is hereby repealed.

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