

HOUSE BILL No. 2654

By Committee on Commerce and Labor

1-19

9 AN ACT concerning workers compensation; relating to benefits; amend-
10 ing K.S.A. 44-510c, 44-510d and 44-510f and repealing the existing
11 sections.
12

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

14 Section 1. K.S.A. 44-510c is hereby amended to read as follows: 44-
15 510c. Where death does not result from the injury, compensation shall
16 be paid as provided in K.S.A. 44-510h and 44-510i and amendments
17 thereto and as follows:

18 (a) (1) Where permanent total disability results from the injury,
19 weekly payments shall be made during the period of permanent total
20 disability in a sum equal to ~~66 2/3%~~ 75% of the average gross weekly wage
21 of the injured employee, computed as provided in K.S.A. 44-511 and
22 amendments thereto, but in no case less than ~~\$25~~ \$100 per week nor
23 more than the dollar amount nearest to 75% of the state's average weekly
24 wage, determined as provided in K.S.A. 44-511 and amendments thereto,
25 per week. The payment of compensation for permanent total disability
26 shall continue for the duration of such disability, subject to review and
27 modification as provided in K.S.A. 44-528 and amendments thereto.

28 (2) Permanent total disability exists when the employee, on account
29 of the injury, has been rendered completely and permanently incapable
30 of engaging in any type of substantial and gainful employment. Loss of
31 both eyes, both hands, both arms, both feet, or both legs, or any combi-
32 nation thereof, in the absence of proof to the contrary, shall constitute a
33 permanent total disability. Substantially total paralysis, or incurable im-
34 becility or insanity, resulting from injury independent of all other causes,
35 shall constitute permanent total disability. In all other cases permanent
36 total disability shall be determined in accordance with the facts.

37 (b) (1) Where temporary total disability results from the injury, no
38 compensation shall be paid during the first week of disability, except that
39 provided in K.S.A. 44-510h and 44-510i and amendments thereto, unless
40 the temporary total disability exists for three consecutive weeks, in which
41 case compensation shall be paid for the first week of such disability.
42 Thereafter weekly payments shall be made during such temporary total
43 disability, in a sum equal to ~~66 2/3%~~ 75% of the average gross weekly wage

1 of the injured employee, computed as provided in K.S.A. 44-511 and
2 amendments thereto, but in no case less than ~~\$25~~ \$100 per week nor
3 more than the dollar amount nearest to 75% of the state's average weekly
4 wage, determined as provided in K.S.A. 44-511 and amendments thereto,
5 per week.

6 (2) Temporary total disability exists when the employee, on account
7 of the injury, has been rendered completely and temporarily incapable of
8 engaging in any type of substantial and gainful employment. A release
9 issued by a health care provider with temporary medical limitations for
10 an employee may or may not be determinative of the employee's actual
11 ability to be engaged in any type of substantial and gainful employment,
12 except that temporary total disability compensation shall not be awarded
13 unless the opinion of the authorized treating health care provider is shown
14 to be based on an assessment of the employee's actual job duties with the
15 employer, with or without accommodation.

16 (3) Where no award has been entered, a return by the employee to
17 any type of substantial and gainful employment or, subject to the provi-
18 sions of subsection (b)(2), a release by a treating health care provider or
19 examining health care provider, who is not regularly employed or retained
20 by the employer, to return to any type of substantial and gainful employ-
21 ment, shall suspend the employee's right to the payment of temporary
22 total disability compensation, but shall not affect any right the employee
23 may have to compensation for partial disability in accordance with K.S.A.
24 44-510d and 44-510e and amendments thereto.

25 (c) When any permanent total disability or temporary total disability
26 is followed by partial disability, compensation shall be paid as provided
27 in K.S.A. 44-510d and 44-510e and amendments thereto.

28 Sec. 2. K.S.A. 44-510d is hereby amended to read as follows: 44-
29 510d. (a) Where disability, partial in character but permanent in quality,
30 results from the injury, the injured employee shall be entitled to the
31 compensation provided in K.S.A. 44-510h and 44-510i and amendments
32 thereto, but shall not be entitled to any other or further compensation
33 for or during the first week following the injury unless such disability
34 exists for three consecutive weeks, in which event compensation shall be
35 paid for the first week. Thereafter compensation shall be paid for tem-
36 porary total loss of use and as provided in the following schedule, ~~66 2/3%~~
37 75% of the average gross weekly wages to be computed as provided in
38 K.S.A. 44-511 and amendments thereto, except that in no case shall the
39 weekly compensation be more than the maximum as provided for in
40 K.S.A. 44-510c and amendments thereto. If there is an award of per-
41 manent disability as a result of the injury there shall be a presumption
42 that disability existed immediately after the injury and compensation is to
43 be paid for not to exceed the number of weeks allowed in the following

1 schedule:

2 (1) For loss of a thumb, 60 weeks.

3 (2) For the loss of a first finger, commonly called the index finger,
4 37 weeks.

5 (3) For the loss of a second finger, 30 weeks.

6 (4) For the loss of a third finger, 20 weeks.

7 (5) For the loss of a fourth finger, commonly called the little finger,
8 15 weeks.

9 (6) Loss of the first phalange of the thumb or of any finger shall be
10 considered to be equal to the loss of $\frac{1}{2}$ of such thumb or finger, and the
11 compensation shall be $\frac{1}{2}$ of the amount specified above. The loss of the
12 first phalange and any part of the second phalange of any finger, which
13 includes the loss of any part of the bone of such second phalange, shall
14 be considered to be equal to the loss of $\frac{2}{3}$ of such finger and the com-
15 pensation shall be $\frac{2}{3}$ of the amount specified above. The loss of the first
16 phalange and any part of the second phalange of a thumb which includes
17 the loss of any part of the bone of such second phalange, shall be consid-
18 ered to be equal to the loss of the entire thumb. The loss of the first and
19 second phalanges and any part of the third proximal phalange of any
20 finger, shall be considered as the loss of the entire finger. Amputation
21 through the joint shall be considered a loss to the next higher schedule.

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

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

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

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

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

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

31 (13) For the loss of an arm, excluding the shoulder joint, shoulder
32 girdle, shoulder musculature or any other shoulder structures, 210 weeks,
33 and for the loss of an arm, including the shoulder joint, shoulder girdle,
34 shoulder musculature or any other shoulder structures, 225 weeks.

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

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

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

38 (17) For the loss of an eye, or the complete loss of the sight thereof,
39 120 weeks.

40 (18) Amputation or severance below the wrist shall be considered as
41 the loss of a hand. Amputation at the wrist and below the elbow shall be
42 considered as the loss of the forearm. Amputation at or above the elbow
43 shall be considered loss of the arm. Amputation below the ankle shall be

1 considered loss of the foot. Amputation at the ankle and below the knee
2 shall be considered as loss of the lower leg. Amputation at or above the
3 knee shall be considered as loss of the leg.

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

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

6 (21) Permanent loss of the use of a finger, thumb, hand, shoulder,
7 arm, forearm, toe, foot, leg or lower leg or the permanent loss of the sight
8 of an eye or the hearing of an ear, shall be equivalent to the loss thereof.
9 For the permanent partial loss of the use of a finger, thumb, hand, shoul-
10 der, arm, toe, foot or leg, or the sight of an eye or the hearing of an ear,
11 compensation shall be paid as provided for in K.S.A. 44-510c and amend-
12 ments thereto, per week during that proportion of the number of weeks
13 in the foregoing schedule provided for the loss of such finger, thumb,
14 hand, shoulder, arm, toe, foot or leg, or the sight of an eye or the hearing
15 of an ear, which partial loss thereof bears to the total loss of a finger,
16 thumb, hand, shoulder, arm, toe, foot or leg, or the sight of an eye or the
17 hearing of an ear; but in no event shall the compensation payable here-
18 under for such partial loss exceed the compensation payable under the
19 schedule for the total loss of such finger, thumb, hand, arm, toe, foot or
20 leg, or the sight of an eye or the hearing of an ear, exclusive of the healing
21 period. As used in this paragraph (21), "shoulder" means the shoulder
22 joint, shoulder girdle, shoulder musculature or any other shoulder
23 structures.

24 (22) For traumatic hernia, compensation shall be limited to the com-
25 pensation under K.S.A. 44-510h and 44-510i and amendments thereto,
26 compensation for temporary total disability during such period of time as
27 such employee is actually unable to work on account of such hernia, and,
28 in the event such hernia is inoperable, weekly compensation during 12
29 weeks, except that, in the event that such hernia is operable, the unrea-
30 sonable refusal of the employee to submit to an operation for surgical
31 repair of such hernia shall deprive such employee of any benefits under
32 the workers compensation act.

33 (23) Loss of a scheduled member shall be based upon permanent
34 impairment of function to the scheduled member as determined using
35 the fourth edition of the American Medical Association Guides to the
36 Evaluation of Permanent Impairment, if the impairment is contained
37 therein.

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

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

6 Sec. 3. K.S.A. 44-510f is hereby amended to read as follows: 44-510f.

7 (a) Notwithstanding any provision of the workers compensation act to the
8 contrary, the maximum compensation benefits payable by an employer
9 shall not exceed the following:

10 ~~(1) For permanent total disability, including temporary total, tem-~~
11 ~~porary partial, permanent partial and temporary partial disability pay-~~
12 ~~ments paid or due, \$125,000 for an injury or any aggravation thereof;~~

13 ~~(2) (1)~~ (1) For temporary total disability, including any prior permanent
14 total, permanent partial or temporary partial disability payments paid or
15 due, \$100,000 for an injury or any aggravation thereof;

16 ~~(3) (2)~~ (2) subject to the provisions of subsection (a)(4), for permanent
17 or temporary partial disability, including any prior temporary total, per-
18 manent total, temporary partial, or permanent partial disability payments
19 paid or due, \$100,000 for an injury or any aggravation thereof; and

20 ~~(4) (3)~~ (3) for permanent partial disability, where functional impairment
21 only is awarded, \$50,000 for an injury or aggravation thereof.

22 (b) If an employer shall voluntarily pay unearned wages to an em-
23 ployee in addition to and in excess of any amount of disability benefits to
24 which the employee is entitled under the workers compensation act, the
25 excess amount paid shall be allowed as a credit to the employer in any
26 final lump-sum settlement, or may be withheld from the employee's
27 wages in weekly amounts the same as the weekly amount or amounts paid
28 in excess of compensation due, but not until and unless the employee's
29 average gross weekly wage for the calendar year exceeds 125% of the
30 state's average weekly wage, determined as provided in K.S.A. 44-511
31 and amendments thereto. The provisions of this subsection shall not apply
32 to any employer who pays any such unearned wages to an employee pur-
33 suant to an agreement between the employer and employee or labor
34 organization to which the employee belongs.

35 Sec. 4. K.S.A. 44-510c, 44-510d and 44-510f are hereby repealed.

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