

SENATE BILL No. 250

By Committee on Ways and Means

2-9

9 AN ACT concerning workers compensation; relating to benefits; amend-
10 ing K.S.A. 44-510c, 44-510d, 44-510e and 44-510f and K.S.A. 2008
11 Supp. 44-501 and repealing the existing sections.
12

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

14 Section 1. K.S.A. 2008 Supp. 44-501 is hereby amended to read as
15 follows: 44-501. (a) If in any employment to which the workers compen-
16 sation act applies, personal injury by accident arising out of and in the
17 course of employment is caused to an employee, the employer shall be
18 liable to pay compensation to the employee in accordance with the pro-
19 visions of the workers compensation act. In proceedings under the work-
20 ers compensation act, the burden of proof shall be on the claimant to
21 establish the claimant's right to an award of compensation and to prove
22 the various conditions on which the claimant's right depends. In deter-
23 mining whether the claimant has satisfied this burden of proof, the trier
24 of fact shall consider the whole record.

25 (b) Except as provided in the workers compensation act, no em-
26 ployer, or other employee of such employer, shall be liable for any injury
27 for which compensation is recoverable under the workers compensation
28 act nor shall an employer be liable to any third party for any injury or
29 death of an employee which was caused under circumstances creating a
30 legal liability against a third party and for which workers compensation is
31 payable by such employer.

32 (c) The employee shall not be entitled to recover for the aggravation
33 of a preexisting condition, except to the extent that the work-related injury
34 causes increased disability. Any award of compensation shall be reduced
35 by the amount of functional impairment determined to be preexisting.

36 (d) (1) If the injury to the employee results from the employee's
37 deliberate intention to cause such injury; or from the employee's willful
38 failure to use a guard or protection against accident required pursuant to
39 any statute and provided for the employee, or a reasonable and proper
40 guard and protection voluntarily furnished the employee by the employer,
41 any compensation in respect to that injury shall be disallowed.

42 (2) The employer shall not be liable under the workers compensation
43 act where the injury, disability or death was contributed to by the em-

1 ployee’s use or consumption of alcohol or any drugs, chemicals or any
 2 other compounds or substances, including but not limited to, any drugs
 3 or medications which are available to the public without a prescription
 4 from a health care provider, prescription drugs or medications, any form
 5 or type of narcotic drugs, marijuana, stimulants, depressants or hallucin-
 6 ogens. In the case of drugs or medications which are available to the
 7 public without a prescription from a health care provider and prescription
 8 drugs or medications, compensation shall not be denied if the employee
 9 can show that such drugs or medications were being taken or used in
 10 therapeutic doses and there have been no prior incidences of the em-
 11 ployee’s impairment on the job as the result of the use of such drugs or
 12 medications within the previous 24 months. It shall be conclusively pre-
 13 sumed that the employee was impaired due to alcohol or drugs if it is
 14 shown that at the time of the injury that the employee had an alcohol
 15 concentration of .04 or more, or a GCMS confirmatory test by quantita-
 16 tive analysis showing a concentration at or above the levels shown on the
 17 following chart for the drugs of abuse listed:

	Confirmatory test cutoff levels (ng/ml)
19 Marijuana metabolite 1	15
20 Cocaine metabolite 2	150
21 Opiates:	
22 Morphine	2000
23 Codeine	2000
24 6-Acetylmorphine ⁴	10 ng/ml
25 Phencyclidine	25
26 Amphetamines:	
27 Amphetamine	500
28 Methamphetamine ³	500

- 29 1 Delta-9-tetrahydrocannabinol-9-carboxylic acid.
- 30 2 Benzoyllecgonine.
- 31 3 Specimen must also contain amphetamine at a concentration greater than or equal to
- 32 200 ng/ml.
- 33 4 Test for 6-AM when morphine concentration exceeds 2,000 ng/ml.

34 An employee’s refusal to submit to a chemical test shall not be admissible
 35 evidence to prove impairment unless there was probable cause to believe
 36 that the employee used, possessed or was impaired by a drug or alcohol
 37 while working. The results of a chemical test shall not be admissible ev-
 38 idence to prove impairment unless the following conditions were met:

- 39 (A) There was probable cause to believe that the employee used, had
- 40 possession of, or was impaired by the drug or alcohol while working;
- 41 (B) the test sample was collected at a time contemporaneous with
- 42 the events establishing probable cause;
- 43 (C) the collecting and labeling of the test sample was performed by

- 1 or under the supervision of a licensed health care professional;
- 2 (D) the test was performed by a laboratory approved by the United
3 States department of health and human services or licensed by the de-
4 partment of health and environment, except that a blood sample may be
5 tested for alcohol content by a laboratory commonly used for that purpose
6 by state law enforcement agencies;
- 7 (E) the test was confirmed by gas chromatography-mass spectroscopy
8 or other comparably reliable analytical method, except that no such con-
9 firmation is required for a blood alcohol sample; and
- 10 (F) the foundation evidence must establish, beyond a reasonable
11 doubt, that the test results were from the sample taken from the em-
12 ployee.
- 13 (3) For purposes of satisfying the probable cause requirement of sub-
14 section (d)(2)(A) of this section, the employer shall be deemed to have
15 met their burden of proof on this issue by establishing any of the following
16 circumstances:
- 17 (A) The testing was done as a result of an employer mandated drug
18 testing policy, in place in writing prior to the date of accident, requiring
19 any worker to submit to testing for drugs or alcohol if they are involved
20 in an accident which requires medical attention;
- 21 (B) the testing was done in the normal course of medical treatment
22 for reasons related to the health and welfare of the injured worker and
23 was not at the direction of the employer; however, the request for GCMS
24 testing for purposes of confirmation, required by subsection (d)(2)(E) of
25 this section, may have been at the employer's request;
- 26 (C) the worker, prior to the date and time of the accident, gave writ-
27 ten consent to the employer that the worker would voluntarily submit to
28 a chemical test for drugs or alcohol following any accident requiring the
29 worker to obtain medical treatment for the injuries suffered. If after suf-
30 fering an accident requiring medical treatment, the worker refuses to
31 submit to a chemical test for drugs or alcohol, this refusal shall be con-
32 sidered evidence of impairment, however, there must be evidence that
33 the presumed impairment contributed to the accident as required by this
34 section; or
- 35 (D) the testing was done as a result of federal or state law or a federal
36 or state rule or regulation having the force and effect of law requiring a
37 post accident testing program and such required program was properly
38 implemented at the time of testing.
- 39 (e) Compensation shall not be paid in case of coronary or coronary
40 artery disease or cerebrovascular injury unless it is shown that the exertion
41 of the work necessary to precipitate the disability was more than the
42 employee's usual work in the course of the employee's regular employ-
43 ment.

1 (f) Except as provided in the workers compensation act, no construc-
2 tion design professional who is retained to perform professional services
3 on a construction project or any employee of a construction design pro-
4 fessional who is assisting or representing the construction design profes-
5 sional in the performance of professional services on the site of the con-
6 struction project, shall be liable for any injury resulting from the
7 employer's failure to comply with safety standards on the construction
8 project for which compensation is recoverable under the workers com-
9 pensation act, unless responsibility for safety practices is specifically as-
10 sumed by contract. The immunity provided by this subsection to any
11 construction design professional shall not apply to the negligent prepara-
12 tion of design plans or specifications.

13 (g) It is the intent of the legislature that the workers compensation
14 act shall be liberally construed for the purpose of bringing employers and
15 employees within the provisions of the act to provide the protections of
16 the workers compensation act to both. The provisions of the workers
17 compensation act shall be applied impartially to both employers and em-
18 ployees in cases arising thereunder.

19 ~~(h) If the employee is receiving retirement benefits under the federal
20 social security act or retirement benefits from any other retirement sys-
21 tem, program or plan which is provided by the employer against which
22 the claim is being made, any compensation benefit payments which the
23 employee is eligible to receive under the workers compensation act for
24 such claim shall be reduced by the weekly equivalent amount of the total
25 amount of all such retirement benefits, less any portion of any such re-
26 tirement benefit, other than retirement benefits under the federal social
27 security act, that is attributable to payments or contributions made by the
28 employee, but in no event shall the workers compensation benefit be less
29 than the workers compensation benefit payable for the employee's per-
30 centage of functional impairment.~~

31 Sec. 2. K.S.A. 44-510c is hereby amended to read as follows: 44-
32 510c. Where death does not result from the injury, compensation shall
33 be paid as provided in K.S.A. 44-510h and 44-510i and amendments
34 thereto and as follows:

35 (a) (1) Where permanent total disability results from the injury,
36 weekly payments shall be made during the period of permanent total
37 disability in a sum equal to ~~66%~~ 75% of the average gross weekly wage
38 of the injured employee, computed as provided in K.S.A. 44-511 and
39 amendments thereto, but in no case less than ~~\$25~~ \$100 per week nor
40 more than the dollar amount nearest to 75% of the state's average weekly
41 wage, determined as provided in K.S.A. 44-511 and amendments thereto,
42 per week. The payment of compensation for permanent total disability
43 shall continue for the duration of such disability, subject to review and

1 modification as provided in K.S.A. 44-528 and amendments thereto.

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

11 (b) (1) Where temporary total disability results from the injury, no
12 compensation shall be paid during the first week of disability, except that
13 provided in K.S.A. 44-510h and 44-510i and amendments thereto, unless
14 the temporary total disability exists for three consecutive weeks, in which
15 case compensation shall be paid for the first week of such disability.
16 Thereafter weekly payments shall be made during such temporary total
17 disability, in a sum equal to ~~66 2/3%~~ 75% of the average gross weekly wage
18 of the injured employee, computed as provided in K.S.A. 44-511 and
19 amendments thereto, but in no case less than ~~\$25~~ \$100 per week nor
20 more than the dollar amount nearest to 75% of the state's average weekly
21 wage, determined as provided in K.S.A. 44-511 and amendments thereto,
22 per week.

23 (2) Temporary total disability exists when the employee, on account
24 of the injury, has been rendered completely and temporarily incapable of
25 engaging in any type of substantial and gainful employment. A release
26 issued by a health care provider with temporary medical limitations for
27 an employee may or may not be determinative of the employee's actual
28 ability to be engaged in any type of substantial and gainful employment,
29 except that temporary total disability compensation shall not be awarded
30 unless the opinion of the authorized treating health care provider is shown
31 to be based on an assessment of the employee's actual job duties with the
32 employer, with or without accommodation.

33 (3) Where no award has been entered, a return by the employee to
34 any type of substantial and gainful employment or, subject to the provi-
35 sions of subsection (b)(2), a release by a treating health care provider or
36 examining health care provider, who is not regularly employed or retained
37 by the employer, to return to any type of substantial and gainful employ-
38 ment, shall suspend the employee's right to the payment of temporary
39 total disability compensation, but shall not affect any right the employee
40 may have to compensation for partial disability in accordance with K.S.A.
41 44-510d and 44-510e and amendments thereto.

42 (c) When any permanent total disability or temporary total disability
43 is followed by partial disability, compensation shall be paid as provided

1 in K.S.A. 44-510d and 44-510e and amendments thereto.

2 Sec. 3. K.S.A. 44-510d is hereby amended to read as follows: 44-
3 510d. (a) Where disability, partial in character but permanent in quality,
4 results from the injury, the injured employee shall be entitled to the
5 compensation provided in K.S.A. 44-510h and 44-510i and amendments
6 thereto, but shall not be entitled to any other or further compensation
7 for or during the first week following the injury unless such disability
8 exists for three consecutive weeks, in which event compensation shall be
9 paid for the first week. Thereafter compensation shall be paid for tem-
10 porary total loss of use and as provided in the following schedule, ~~66²/₃%~~
11 75% of the average gross weekly wages to be computed as provided in
12 K.S.A. 44-511 and amendments thereto, except that in no case shall the
13 weekly compensation be more than the maximum as provided for in
14 K.S.A. 44-510c and amendments thereto. If there is an award of per-
15 manent disability as a result of the injury there shall be a presumption
16 that disability existed immediately after the injury and compensation is to
17 be paid for not to exceed the number of weeks allowed in the following
18 schedule:

- 19 (1) For loss of a thumb, 60 weeks.
- 20 (2) For the loss of a first finger, commonly called the index finger,
21 37 weeks.
- 22 (3) For the loss of a second finger, 30 weeks.
- 23 (4) For the loss of a third finger, 20 weeks.
- 24 (5) For the loss of a fourth finger, commonly called the little finger,
25 15 weeks.
- 26 (6) Loss of the first phalange of the thumb or of any finger shall be
27 considered to be equal to the loss of $\frac{1}{2}$ of such thumb or finger, and the
28 compensation shall be $\frac{1}{2}$ of the amount specified above. The loss of the
29 first phalange and any part of the second phalange of any finger, which
30 includes the loss of any part of the bone of such second phalange, shall
31 be considered to be equal to the loss of $\frac{2}{3}$ of such finger and the com-
32 pensation shall be $\frac{2}{3}$ of the amount specified above. The loss of the first
33 phalange and any part of the second phalange of a thumb which includes
34 the loss of any part of the bone of such second phalange, shall be consid-
35 ered to be equal to the loss of the entire thumb. The loss of the first and
36 second phalanges and any part of the third proximal phalange of any
37 finger, shall be considered as the loss of the entire finger. Amputation
38 through the joint shall be considered a loss to the next higher schedule.
- 39 (7) For the loss of a great toe, 30 weeks.
- 40 (8) For the loss of any toe other than the great toe, 10 weeks.
- 41 (9) The loss of the first phalange of any toe shall be considered to be
42 equal to the loss of $\frac{1}{2}$ of such toe and the compensation shall be $\frac{1}{2}$ of
43 the amount above specified.

- 1 (10) The loss of more than one phalange of a toe shall be considered
2 to be equal to the loss of the entire toe.
- 3 (11) For the loss of a hand, 150 weeks.
- 4 (12) For the loss of a forearm, 200 weeks.
- 5 (13) For the loss of an arm, excluding the shoulder joint, shoulder
6 girdle, shoulder musculature or any other shoulder structures, 210 weeks,
7 and for the loss of an arm, including the shoulder joint, shoulder girdle,
8 shoulder musculature or any other shoulder structures, 225 weeks.
- 9 (14) For the loss of a foot, 125 weeks.
- 10 (15) For the loss of a lower leg, 190 weeks.
- 11 (16) For the loss of a leg, 200 weeks.
- 12 (17) For the loss of an eye, or the complete loss of the sight thereof,
13 120 weeks.
- 14 (18) Amputation or severance below the wrist shall be considered as
15 the loss of a hand. Amputation at the wrist and below the elbow shall be
16 considered as the loss of the forearm. Amputation at or above the elbow
17 shall be considered loss of the arm. Amputation below the ankle shall be
18 considered loss of the foot. Amputation at the ankle and below the knee
19 shall be considered as loss of the lower leg. Amputation at or above the
20 knee shall be considered as loss of the leg.
- 21 (19) For the complete loss of hearing of both ears, 110 weeks.
- 22 (20) For the complete loss of hearing of one ear, 30 weeks.
- 23 (21) Permanent loss of the use of a finger, thumb, hand, shoulder,
24 arm, forearm, toe, foot, leg or lower leg or the permanent loss of the sight
25 of an eye or the hearing of an ear, shall be equivalent to the loss thereof.
26 For the permanent partial loss of the use of a finger, thumb, hand, shoul-
27 der, arm, toe, foot or leg, or the sight of an eye or the hearing of an ear,
28 compensation shall be paid as provided for in K.S.A. 44-510c and amend-
29 ments thereto, per week during that proportion of the number of weeks
30 in the foregoing schedule provided for the loss of such finger, thumb,
31 hand, shoulder, arm, toe, foot or leg, or the sight of an eye or the hearing
32 of an ear, which partial loss thereof bears to the total loss of a finger,
33 thumb, hand, shoulder, arm, toe, foot or leg, or the sight of an eye or the
34 hearing of an ear; but in no event shall the compensation payable here-
35 under for such partial loss exceed the compensation payable under the
36 schedule for the total loss of such finger, thumb, hand, arm, toe, foot or
37 leg, or the sight of an eye or the hearing of an ear, exclusive of the healing
38 period. As used in this paragraph (21), "shoulder" means the shoulder
39 joint, shoulder girdle, shoulder musculature or any other shoulder struc-
40 tures.
- 41 (22) For traumatic hernia, compensation shall be limited to the com-
42 pensation under K.S.A. 44-510h and 44-510i and amendments thereto,
43 compensation for temporary total disability during such period of time as

1 such employee is actually unable to work on account of such hernia, and,
2 in the event such hernia is inoperable, weekly compensation during 12
3 weeks, except that, in the event that such hernia is operable, the unrea-
4 sonable refusal of the employee to submit to an operation for surgical
5 repair of such hernia shall deprive such employee of any benefits under
6 the workers compensation act.

7 (23) Loss of a scheduled member shall be based upon permanent
8 impairment of function to the scheduled member as determined using
9 the fourth edition of the American Medical Association Guides to the
10 Evaluation of Permanent Impairment, if the impairment is contained
11 therein.

12 (b) Whenever the employee is entitled to compensation for a specific
13 injury under the foregoing schedule, the same shall be exclusive of all
14 other compensation except the benefits provided in K.S.A. 44-510h and
15 44-510i and amendments thereto, and no additional compensation shall
16 be allowable or payable for any temporary or permanent, partial or total
17 disability, except that the director, in proper cases, may allow additional
18 compensation during the actual healing period, following amputation.
19 The healing period shall not be more than 10% of the total period allowed
20 for the scheduled injury in question nor in any event for longer than 15
21 weeks. The return of the employee to the employee's usual occupation
22 shall terminate the healing period.

23 Sec. 4. K.S.A. 44-510e is hereby amended to read as follows: 44-
24 510e. (a) If the employer and the employee are unable to agree upon the
25 amount of compensation to be paid in the case of injury not covered by
26 the schedule in K.S.A. 44-510d and amendments thereto, the amount of
27 compensation shall be settled according to the provisions of the workers
28 compensation act as in other cases of disagreement, except that in case
29 of temporary or permanent partial general disability not covered by such
30 schedule, the employee shall receive weekly compensation as determined
31 in this subsection during such period of temporary or permanent partial
32 general disability not exceeding a maximum of 415 weeks. Weekly com-
33 pensation for temporary partial general disability shall be ~~66%~~ 75% of
34 the difference between the average gross weekly wage that the employee
35 was earning prior to such injury as provided in the workers compensation
36 act and the amount the employee is actually earning after such injury in
37 any type of employment, except that in no case shall such weekly com-
38 pensation exceed the maximum as provided for in K.S.A. 44-510c and
39 amendments thereto. Permanent partial general disability exists when the
40 employee is disabled in a manner which is partial in character and per-
41 manent in quality and which is not covered by the schedule in K.S.A. 44-
42 510d and amendments thereto. The extent of permanent partial general
43 disability shall be the extent, expressed as a percentage, to which the

1 employee, in the opinion of the physician, has lost the ability to perform
2 the work tasks that the employee performed in any substantial gainful
3 employment during the fifteen-year period preceding the accident, av-
4 eraged together with the difference between the average weekly wage
5 the worker was earning at the time of the injury and the average weekly
6 wage the worker is earning after the injury. In any event, the extent of
7 permanent partial general disability shall not be less than the percentage
8 of functional impairment. Functional impairment means the extent, ex-
9 pressed as a percentage, of the loss of a portion of the total physiological
10 capabilities of the human body as established by competent medical ev-
11 idence and based on the fourth edition of the American Medical Asso-
12 ciation Guides to the Evaluation of Permanent Impairment, if the im-
13 pairment is contained therein. An employee shall not be entitled to
14 receive permanent partial general disability compensation in excess of the
15 percentage of functional impairment as long as the employee is engaging
16 in any work for wages equal to 90% or more of the average gross weekly
17 wage that the employee was earning at the time of the injury. If the
18 employer and the employee are unable to agree upon the employee's
19 functional impairment and if at least two medical opinions based on com-
20 petent medical evidence disagree as to the percentage of functional im-
21 pairment, such matter may be referred by the administrative law judge
22 to an independent health care provider who shall be selected by the ad-
23 ministrative law judge from a list of health care providers maintained by
24 the director. The health care provider selected by the director pursuant
25 to this section shall issue an opinion regarding the employee's functional
26 impairment which shall be considered by the administrative law judge in
27 making the final determination. The amount of weekly compensation for
28 permanent partial general disability shall be determined as follows:

29 (1) Find the payment rate which shall be the lesser of (A) the amount
30 determined by multiplying the average gross weekly wage of the worker
31 prior to such injury by ~~66 2/3%~~ 75% or (B) the maximum provided in K.S.A.
32 44-510c and amendments thereto;

33 (2) find the number of disability weeks payable by subtracting from
34 415 weeks the total number of weeks of temporary total disability com-
35 pensation was paid, excluding the first 15 weeks of temporary total disa-
36 bility compensation that was paid, and multiplying the remainder by the
37 percentage of permanent partial general disability as determined under
38 this subsection (a); and

39 (3) multiply the number of disability weeks determined in paragraph
40 (2) of this subsection (a) by the payment rate determined in paragraph
41 (1) of this subsection (a).

42 The resulting award shall be paid for the number of disability weeks at
43 the full payment rate until fully paid or modified. If there is an award of

1 permanent disability as a result of the compensable injury, there shall be
2 a presumption that disability existed immediately after such injury. In any
3 case of permanent partial disability under this section, the employee shall
4 be paid compensation for not to exceed 415 weeks following the date of
5 such injury, subject to review and modification as provided in K.S.A. 44-
6 528 and amendments thereto.

7 (b) If an employee has received an injury for which compensation is
8 being paid, and the employee's death is caused by other and independent
9 causes, any payment of compensation already due the employee at the
10 time of death and then unpaid shall be paid to the employee's dependents
11 directly or to the employee's legal representatives if the employee left no
12 dependent, but the liability of the employer for the payments of com-
13 pensation not yet due at the time of the death of such employee shall
14 cease and be abrogated by the employee's death.

15 (c) The total amount of compensation that may be allowed or
16 awarded an injured employee for all injuries received in any one accident
17 shall in no event exceed the compensation which would be payable under
18 the workers compensation act for 100% permanent total disability re-
19 sulting from such accident.

20 (d) Where a minor employee or a minor employee's dependents are
21 entitled to compensation under the workers compensation act, such com-
22 pensation shall be exclusive of all other remedies or causes of action for
23 such injury or death, and no claim or cause of action against the employer
24 shall inure or accrue to or exist in favor of the parent or parents of such
25 minor employee on account of any damage resulting to such parent or
26 parents on account of the loss of earnings or loss of service of such minor
27 employee.

28 (e) In any case of injury to or death of an employee, where the em-
29 ployee or the employee's dependents are entitled to compensation under
30 the workers compensation act, such compensation shall be exclusive of
31 all other remedies or causes of action for such injury or death, and no
32 claim or action shall inure, accrue to or exist in favor of the surviving
33 spouse or any relative or next of kin of such employee against such em-
34 ployer on account of any damage resulting to such surviving spouse or
35 any relative or next of kin on account of the loss of earnings, services, or
36 society of such employee or on any other account resulting from or grow-
37 ing out of the injury or death of such employee.

38 Sec. 5. K.S.A. 44-510f is hereby amended to read as follows: 44-510f.

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

42 (1) For permanent total disability, ~~including temporary total, tem-~~
43 ~~porary partial, permanent partial and temporary partial disability pay-~~

1 ~~ments paid or due, \$125,000 for an injury or any aggravation thereof the~~
 2 ~~payment of compensation shall continue for the duration of such disabil-~~
 3 ~~ity, subject to review and modification as provided in K.S.A. 44-528, and~~
 4 ~~amendments thereto;~~

5 (2) for temporary total disability, including any prior permanent total,
 6 permanent partial or temporary partial disability payments paid or due,
 7 ~~\$100,000~~ \$200,000 for an injury or any aggravation thereof;

8 (3) subject to the provisions of subsection (a)(4), for permanent or
 9 temporary partial disability, including any prior temporary total, perma-
 10 nent total, temporary partial, or permanent partial disability payments
 11 paid or due, ~~\$100,000~~ \$200,000 for an injury or any aggravation thereof;
 12 and

13 (4) ~~for permanent partial disability, where functional impairment only~~
 14 ~~is awarded, \$50,000 for an injury or aggravation thereof beginning July~~
 15 ~~1, 2008, and on July 1 of each subsequent year, the maximum compen-~~
 16 ~~sation benefits set out in this subsection shall be adjusted up or down by~~
 17 ~~a percentage equal to the percentage of change in the state's average~~
 18 ~~weekly wage as determined by the secretary by computing the average~~
 19 ~~weekly wage paid to employees in insured work during the previous cal-~~
 20 ~~endar year. The percentage shall be rounded to the nearest full percentage~~
 21 ~~and if the dollar amount of the maximum compensation benefit so com-~~
 22 ~~puted is not a multiple of \$1, then the computed maximum compensation~~
 23 ~~benefit amount shall be reduced to the next lower multiple of \$1. Prior to~~
 24 ~~July 1 of each year, the secretary shall announce the maximum compen-~~
 25 ~~sation benefit so computed by publication in the Kansas register.~~

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

39 Sec. 6. K.S.A. 44-510c, 44-510d, 44-510e and 44-510f and K.S.A.
 40 2008 Supp. 44-501 are hereby repealed.

41 Sec. 7. This act shall take effect and be in force from and after its
 42 publication in the statute book.