

## HOUSE BILL No. 2425

By Committee on Vision 2020

1-12

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9 AN ACT concerning workers compensation; pertaining to firefighters'  
10 exposure to certain health conditions on the job; amending K.S.A. 2009  
11 Supp. 44-501 and repealing the existing section.  
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13 *Be it enacted by the Legislature of the State of Kansas:*

14 Section 1. K.S.A. 2009 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-Acetylmorphine4 .....	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 Benzoylcegonine.	
31     3 Specimen must also contain amphetamine at a concentration greater than or equal to 200	
32     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 (i) (1) *Any firefighter who suffers death, impairment or disability*  
32 *from coronary disease, coronary artery disease, disease of the lung or*  
33 *respiratory tract, cancer, hepatitis, HIV, HIV infection, or any other duty-*  
34 *related communicable disease, shall be presumed to have suffered personal*  
35 *injury by accident, arising out of and in the course of employment, and*  
36 *that such personal injury caused or contributed to the death, impairment*  
37 *or disability. The presumption may be overcome by clear and convincing*  
38 *evidence of a wholly non-occupational cause of the death, impairment or*  
39 *disability.*

40 (2) *For the purposes of this subsection, the terms "HIV" and "HIV*  
41 *infection" shall have the meaning ascribed to them in K.S.A. 65-6001 and*  
42 *amendments thereto.*

43 Sec. 2. K.S.A. 2009 Supp. 44-501 is hereby repealed.

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