

HOUSE BILL No. 2703

By Committee on Commerce, Labor and Economic Development

2-7

1 AN ACT concerning workers compensation; relating to the determination
2 of functional impairment; use of American medical association guides;
3 amending K.S.A. 2017 Supp. 44-508, 44-510d and 44-510e and
4 repealing the existing sections.

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

7 Section 1. K.S.A. 2017 Supp. 44-508 is hereby amended to read as
8 follows: 44-508. As used in the workers compensation act:

9 (a) "Employer" includes: (1) Any person or body of persons,
10 corporate or unincorporated, and the legal representative of a deceased
11 employer or the receiver or trustee of a person, corporation, association or
12 partnership; (2) the state or any department, agency or authority of the
13 state, any city, county, school district or other political subdivision or
14 municipality or public corporation and any instrumentality thereof; and (3)
15 for the purposes of community service work, the entity for which the
16 community service work is being performed and the governmental agency
17 which assigned the community service work, if any, if either such entity or
18 such governmental agency has filed a written statement of election with
19 the director to accept the provisions under the workers compensation act
20 for persons performing community service work and in such case such
21 entity and such governmental agency shall be deemed to be the joint
22 employer of the person performing the community service work and both
23 shall have the rights, liabilities and immunities provided under the workers
24 compensation act for an employer with regard to the community service
25 work, except that the liability for providing benefits shall be imposed only
26 on the party which filed such election with the director, or on both if both
27 parties have filed such election with the director; for purposes of
28 community service work, "governmental agency" shall not include any
29 court or any officer or employee thereof and any case where there is
30 deemed to be a "joint employer" shall not be construed to be a case of dual
31 or multiple employment.

32 (b) "Workman" or "employee" or "worker" means any person who
33 has entered into the employment of or works under any contract of service
34 or apprenticeship with an employer. Such terms shall include, but not be
35 limited to: Executive officers of corporations; professional athletes;
36 persons serving on a volunteer basis as duly authorized law enforcement

1 officers, attendants, as defined in ~~subsection (f)~~ of K.S.A. 65-6112(*f*), and
2 amendments thereto, drivers of ambulances as defined in ~~subsection (d)~~ of
3 K.S.A. 65-6112(*d*), and amendments thereto, firefighters, but only to the
4 extent and during such periods as they are so serving in such capacities;
5 persons employed by educational, religious and charitable organizations,
6 but only to the extent and during the periods that they are paid wages by
7 such organizations; persons in the service of the state, or any department,
8 agency or authority of the state, any city, school district, or other political
9 subdivision or municipality or public corporation and any instrumentality
10 thereof, under any contract of service, express or implied, and every
11 official or officer thereof, whether elected or appointed, while performing
12 official duties; persons in the service of the state as volunteer members of
13 the Kansas department of civil air patrol, but only to the extent and during
14 such periods as they are officially engaged in the performance of functions
15 specified in K.S.A. 48-3302, and amendments thereto; volunteers in any
16 employment, if the employer has filed an election to extend coverage to
17 such volunteers; minors, whether such minors are legally or illegally
18 employed; and persons performing community service work, but only to
19 the extent and during such periods as they are performing community
20 service work and if an election has been filed an election to extend
21 coverage to such persons. Any reference to an employee who has been
22 injured shall, where the employee is dead, include a reference to the
23 employee's dependents, to the employee's legal representatives, or, if the
24 employee is a minor or an incapacitated person, to the employee's guardian
25 or conservator. Unless there is a valid election in effect which has been
26 filed as provided in K.S.A. 44-542a, and amendments thereto, such terms
27 shall not include individual employers, limited liability company
28 members, partners or self-employed persons.

29 (c) (1) "Dependents" means such members of the employee's family
30 as were wholly or in part dependent upon the employee at the time of the
31 accident or injury.

32 (2) "Members of a family" means only surviving legal spouse and
33 children; or if no surviving legal spouse or children, then parents or
34 grandparents; or if no parents or grandparents, then grandchildren; or if no
35 grandchildren, then brothers and sisters. In the meaning of this section,
36 parents include stepparents, children include stepchildren, grandchildren
37 include stepgrandchildren, brothers and sisters include stepbrothers and
38 stepsisters, and children and parents include that relation by legal
39 adoption. In the meaning of this section, a surviving spouse shall not be
40 regarded as a dependent of a deceased employee or as a member of the
41 family, if the surviving spouse shall have for more than six months
42 willfully or voluntarily deserted or abandoned the employee prior to the
43 date of the employee's death.

1 (3) "Wholly dependent child or children" means:

2 (A) A birth child or adopted child of the employee except such a child
3 whose relationship to the employee has been severed by adoption;

4 (B) a stepchild of the employee who lives in the employee's
5 household;

6 (C) any other child who is actually dependent in whole or in part on
7 the employee and who is related to the employee by marriage or
8 consanguinity; or

9 (D) any child as defined in subsection (c)(3)(A), (3)(B) or (3)(C) who
10 is less than 23 years of age and who is not physically or mentally capable
11 of earning wages in any type of substantial and gainful employment or
12 who is a full-time student attending an accredited institution of higher
13 education or vocational education.

14 (d) "Accident" means an undesigned, sudden and unexpected
15 traumatic event, usually of an afflictive or unfortunate nature and often,
16 but not necessarily, accompanied by a manifestation of force. An accident
17 shall be identifiable by time and place of occurrence, produce at the time
18 symptoms of an injury, and occur during a single work shift. The accident
19 must be the prevailing factor in causing the injury. "Accident" shall in no
20 case be construed to include repetitive trauma in any form.

21 (e) "Repetitive trauma" refers to cases where an injury occurs as a
22 result of repetitive use, cumulative traumas or microtraumas. The
23 repetitive nature of the injury must be demonstrated by diagnostic or
24 clinical tests. The repetitive trauma must be the prevailing factor in
25 causing the injury. "Repetitive trauma" shall in no case be construed to
26 include occupational disease, as defined in K.S.A. 44-5a01, and
27 amendments thereto.

28 In the case of injury by repetitive trauma, the date of injury shall be the
29 earliest of:

30 (1) The date the employee, while employed for the employer against
31 whom benefits are sought, is taken off work by a physician due to the
32 diagnosed repetitive trauma;

33 (2) the date the employee, while employed for the employer against
34 whom benefits are sought, is placed on modified or restricted duty by a
35 physician due to the diagnosed repetitive trauma;

36 (3) the date the employee, while employed for the employer against
37 whom benefits are sought, is advised by a physician that the condition is
38 work-related; or

39 (4) the last day worked, if the employee no longer works for the
40 employer against whom benefits are sought.

41 In no case shall the date of accident be later than the last date worked.

42 (f) (1) "Personal injury" and "injury" mean any lesion or change in
43 the physical structure of the body, causing damage or harm thereto.

1 Personal injury or injury may occur only by accident, repetitive trauma or
2 occupational disease as those terms are defined.

3 (2) An injury is compensable only if it arises out of and in the course
4 of employment. An injury is not compensable because work was a
5 triggering or precipitating factor. An injury is not compensable solely
6 because it aggravates, accelerates or exacerbates a preexisting condition or
7 renders a preexisting condition symptomatic.

8 (A) An injury by repetitive trauma shall be deemed to arise out of
9 employment only if:

10 (i) The employment exposed the worker to an increased risk or
11 hazard which the worker would not have been exposed in normal non-
12 employment life;

13 (ii) the increased risk or hazard to which the employment exposed the
14 worker is the prevailing factor in causing the repetitive trauma; and

15 (iii) the repetitive trauma is the prevailing factor in causing both the
16 medical condition and resulting disability or impairment.

17 (B) An injury by accident shall be deemed to arise out of employment
18 only if:

19 (i) There is a causal connection between the conditions under which
20 the work is required to be performed and the resulting accident; and

21 (ii) the accident is the prevailing factor causing the injury, medical
22 condition, and resulting disability or impairment.

23 (3) (A) The words "arising out of and in the course of employment"
24 as used in the workers compensation act shall not be construed to include:

25 (i) Injury which occurred as a result of the natural aging process or by
26 the normal activities of day-to-day living;

27 (ii) accident or injury which arose out of a neutral risk with no
28 particular employment or personal character;

29 (iii) accident or injury which arose out of a risk personal to the
30 worker; or

31 (iv) accident or injury which arose either directly or indirectly from
32 idiopathic causes.

33 (B) The words "arising out of and in the course of employment" as
34 used in the workers compensation act shall not be construed to include
35 injuries to the employee occurring while the employee is on the way to
36 assume the duties of employment or after leaving such duties, the
37 proximate cause of which injury is not the employer's negligence. An
38 employee shall not be construed as being on the way to assume the duties
39 of employment or having left such duties at a time when the worker is on
40 the premises owned or under the exclusive control of the employer or on
41 the only available route to or from work which is a route involving a
42 special risk or hazard connected with the nature of the employment that is
43 not a risk or hazard to which the general public is exposed and which is a

1 route not used by the public except in dealings with the employer. An
2 employee shall not be construed as being on the way to assume the duties
3 of employment, if the employee is a provider of emergency services
4 responding to an emergency.

5 (C) The words, "arising out of and in the course of employment" as
6 used in the workers compensation act shall not be construed to include
7 injuries to employees while engaged in recreational or social events under
8 circumstances where the employee was under no duty to attend and where
9 the injury did not result from the performance of tasks related to the
10 employee's normal job duties or as specifically instructed to be performed
11 by the employer.

12 (g) "Prevailing" as it relates to the term "factor" means the primary
13 factor, in relation to any other factor. In determining what constitutes the
14 "prevailing factor" in a given case, the administrative law judge shall
15 consider all relevant evidence submitted by the parties.

16 (h) "Burden of proof" means the burden of a party to persuade the
17 trier of facts by a preponderance of the credible evidence that such party's
18 position on an issue is more probably true than not true on the basis of the
19 whole record unless a higher burden of proof is specifically required by
20 this act.

21 (i) "Director" means the director of workers compensation as
22 provided for in K.S.A. 75-5708, and amendments thereto.

23 (j) "Health care provider" means any person licensed, by the proper
24 licensing authority of this state, another state or the District of Columbia,
25 to practice medicine and surgery, osteopathy, chiropractic, dentistry,
26 optometry, podiatry, audiology or psychology.

27 (k) "Secretary" means the secretary of labor.

28 (l) "Construction design professional" means any person who is an
29 architect, professional engineer, landscape architect or land surveyor who
30 has been issued a license by the state board of technical professions to
31 practice such technical profession in Kansas or any corporation organized
32 to render professional services through the practice of one or more of such
33 technical professions in Kansas under the professional corporation law of
34 Kansas or any corporation issued a certificate of authorization under
35 K.S.A. 74-7036, and amendments thereto, to practice one or more of such
36 technical professions in Kansas.

37 (m) "Community service work" means: (1) Public or community
38 service performed as a result of a contract of diversion or of assignment to
39 a community corrections program or conservation camp or suspension of
40 sentence or as a condition of probation or in lieu of a fine imposed by
41 court order; or (2) public or community service or other work performed
42 as a requirement for receipt of any kind of public assistance in accordance
43 with any program administered by the secretary for children and families.

1 (n) "Utilization review" means the initial evaluation of
2 appropriateness in terms of both the level and the quality of health care
3 and health services provided a patient, based on accepted standards of the
4 health care profession involved. Such evaluation is accomplished by
5 means of a system which identifies the utilization of health care services
6 above the usual range of utilization for such services, which is based on
7 accepted standards of the health care profession involved, and which refers
8 instances of possible inappropriate utilization to the director for referral to
9 a peer review committee.

10 (o) "Peer review" means an evaluation by a peer review committee of
11 the appropriateness, quality and cost of health care and health services
12 provided a patient, which is based on accepted standards of the health care
13 profession involved and which is conducted in conjunction with utilization
14 review.

15 (p) "Peer review committee" means a committee composed of health
16 care providers licensed to practice the same health care profession as the
17 health care provider who rendered the health care services being reviewed.

18 (q) "Group-funded self-insurance plan" includes each group-funded
19 workers compensation pool, which is authorized to operate in this state
20 under K.S.A. 44-581 through 44-592, and amendments thereto, each
21 municipal group-funded pool under the Kansas municipal group-funded
22 pool act which is covering liabilities under the workers compensation act,
23 and any other similar group-funded or pooled plan or arrangement that
24 provides coverage for employer liabilities under the workers compensation
25 act and is authorized by law.

26 (r) On and after the effective date of this act, "workers compensation
27 board" or "board" means the workers compensation appeals board
28 established under K.S.A. 44-555c, and amendments thereto.

29 (s) "Usual charge" means the amount most commonly charged by
30 health care providers for the same or similar services.

31 (t) "Customary charge" means the usual rates or range of fees charged
32 by health care providers in a given locale or area.

33 (u) "Functional impairment" means the extent, expressed as a
34 percentage, of the loss of a portion of the total physiological capabilities of
35 the human body as established by competent medical evidence and based
36 on the fourth edition of the American medical association guides to the
37 evaluation of impairment, if the impairment is contained therein.

38 (v) "Authorized treating physician" means a licensed physician or
39 other health care provider authorized by the employer or insurance carrier
40 or both, or appointed pursuant to court-order to provide those medical
41 services deemed necessary to diagnose and treat an injury arising out of
42 and in the course of employment.

43 (w) "Mail" means the use of the United States postal service or other

1 land based delivery service or transmission by electronic means, including
2 delivery by fax, e-mail or other electronic delivery method designated by
3 the director of workers compensation.

4 Sec. 2. K.S.A. 2017 Supp. 44-510d is hereby amended to read as
5 follows: 44-510d. (a) Where disability, partial in character but permanent
6 in quality, results from the injury, the injured employee shall be entitled to
7 the compensation provided in K.S.A. 44-510h and 44-510i, and
8 amendments thereto. The injured employee may be entitled to payment of
9 temporary total disability as defined in K.S.A. 44-510c, and amendments
10 thereto, or temporary partial disability as defined in ~~subsection (a)(1) of~~
11 K.S.A. 44-510e(a)(1), and amendments thereto, provided that the injured
12 employee shall not be entitled to any other or further compensation for or
13 during the first week following the injury unless such disability exists for
14 three consecutive weeks, in which event compensation shall be paid for
15 the first week. Thereafter compensation shall be paid for temporary total or
16 temporary partial disability as provided in the following schedule, $66\frac{2}{3}\%$
17 of the average weekly wages to be computed as provided in K.S.A. 44-
18 511, and amendments thereto, except that in no case shall the weekly
19 compensation be more than the maximum as provided for in K.S.A. 44-
20 510c, and amendments thereto.

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

- 25 (1) For loss of a thumb, 60 weeks.
- 26 (2) For the loss of a first finger, commonly called the index finger, 37
27 weeks.
- 28 (3) For the loss of a second finger, 30 weeks.
- 29 (4) For the loss of a third finger, 20 weeks.
- 30 (5) For the loss of a fourth finger, commonly called the little finger,
31 15 weeks.

32 (6) Loss of the first phalange of the thumb or of any finger shall be
33 considered to be equal to the loss of $\frac{1}{2}$ of such thumb or finger, and the
34 compensation shall be $\frac{1}{2}$ of the amount specified above. The loss of the
35 first phalange and any part of the second phalange of any finger, which
36 includes the loss of any part of the bone of such second phalange, shall be
37 considered to be equal to the loss of $\frac{2}{3}$ of such finger and the
38 compensation shall be $\frac{2}{3}$ of the amount specified above. The loss of the
39 first phalange and any part of the second phalange of a thumb which
40 includes the loss of any part of the bone of such second phalange, shall be
41 considered to be equal to the loss of the entire thumb. The loss of the first
42 and second phalanges and any part of the third proximal phalange of any
43 finger, shall be considered as the loss of the entire finger. Amputation

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

1 period. As used in this paragraph (21), "shoulder" means the shoulder
2 joint, shoulder girdle, shoulder musculature or any other shoulder
3 structures.

4 (22) For traumatic hernia, compensation shall be limited to the
5 compensation under K.S.A. 44-510h and 44-510i, and amendments
6 thereto, compensation for temporary total disability during such period of
7 time as such employee is actually unable to work on account of such
8 hernia, and, in the event such hernia is inoperable, weekly compensation
9 during 12 weeks, except that, in the event that such hernia is operable, the
10 unreasonable refusal of the employee to submit to an operation for surgical
11 repair of such hernia shall deprive such employee of any benefits under the
12 workers compensation act.

13 (23) Loss of or loss of use of a scheduled member shall be ~~based~~
14 ~~upon permanent impairment of function to the scheduled member as~~
15 ~~determined using the fourth edition of the American medical association~~
16 ~~guides to the evaluation of permanent impairment, if the impairment is~~
17 ~~contained therein, until January 1, 2015, but for injuries occurring on and~~
18 ~~after January 1, 2015, shall be determined by using. There shall be a~~
19 *rebuttable presumption that the sixth edition of the American medical*
20 *association guides to the evaluation of permanent impairment, if the*
21 *impairment is contained therein is the most appropriate edition to*
22 *determine the impairment of function.*

23 (24) Where an injury results in the loss of or loss of use of more than
24 one scheduled member within a single extremity, the functional
25 impairment attributable to each scheduled member shall be combined
26 ~~pursuant to the fourth edition of using the American medical association~~
27 ~~guides for evaluation of permanent impairment until January 1, 2015, but~~
28 ~~for injuries occurring on and after January 1, 2015, shall be combined~~
29 ~~pursuant to. There shall be a rebuttable presumption that the sixth edition~~
30 ~~of the American medical association guides to the evaluation of permanent~~
31 ~~impairment, and is the most appropriate edition to determine the~~
32 *impairment of function.* Compensation awarded shall be calculated to the
33 highest scheduled member actually impaired.

34 (c) Whenever the employee is entitled to compensation for a specific
35 injury under the foregoing schedule, the same shall be exclusive of all
36 other compensation except the benefits provided in K.S.A. 44-510h and
37 44-510i, and amendments thereto, and no additional compensation shall be
38 allowable or payable for any temporary or permanent, partial or total
39 disability, except that the director, in proper cases, may allow additional
40 compensation during the actual healing period, following amputation. The
41 healing period shall not be more than 10% of the total period allowed for
42 the scheduled injury in question nor in any event for longer than 15 weeks.
43 The return of the employee to the employee's usual occupation shall

1 terminate the healing period.

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

5 (1) Payment rate shall be the lesser of: (A) The amount determined by
6 multiplying the average weekly wage of the worker prior to such injury by
7 $66\frac{2}{3}\%$; or (B) the maximum provided in K.S.A. 44-510c, and amendments
8 thereto;

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

18 The resulting award shall be paid for the number of weeks at the
19 payment rate until fully paid or modified. Under no circumstances shall
20 the period of permanent partial disability run concurrently with the period
21 of temporary total or temporary partial disability.

22 Sec. 3. K.S.A. 2017 Supp. 44-510e is hereby amended to read as
23 follows: 44-510e. (a) In case of whole body injury resulting in temporary
24 or permanent partial general disability not covered by the schedule in
25 K.S.A. 44-510d, and amendments thereto, the employee shall receive
26 weekly compensation as determined in this subsection during the period of
27 temporary or permanent partial general disability not exceeding a
28 maximum of 415 weeks.

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

35 (2) (A) Permanent partial general disability exists when the employee
36 is disabled in a manner which is partial in character and permanent in
37 quality and which is not covered by the schedule in K.S.A. 44-510d, and
38 amendments thereto. Compensation for permanent partial general
39 disability shall also be paid as provided in this section where an injury
40 results in:

41 (i) The loss of or loss of use of a shoulder, arm, forearm or hand of
42 one upper extremity, combined with the loss of or loss of use of a shoulder,
43 arm, forearm or hand of the other upper extremity;

1 (ii) the loss of or loss of use of a leg, lower leg or foot of one lower
2 extremity, combined with the loss of or loss of use of a leg, lower leg or
3 foot of the other lower extremity; or

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

5 (B) The extent of permanent partial general disability shall be the
6 percentage of functional impairment the employee sustained on account of
7 the injury as established by competent medical evidence and ~~based on the~~
8 ~~fourth edition of~~ *shall be determined using* the American medical
9 association guides to the evaluation of permanent impairment, ~~if the~~
10 ~~impairment is contained therein, until January 1, 2015, but for injuries~~
11 ~~occurring on and after January 1, 2015, based on.~~ *There shall be a*
12 *rebuttable presumption that* the sixth edition of the American medical
13 association guides to the evaluation of permanent impairment, ~~if the~~
14 ~~impairment is contained therein is the most appropriate edition to~~
15 *determine the impairment of function.*

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

19 ~~(i) The percentage of functional impairment determined to be caused~~
20 ~~solely by the injury exceeds 7½% to the body as a whole or the overall~~
21 ~~functional impairment is equal to or exceeds 10% to the body as a whole~~
22 ~~in cases where there is preexisting functional impairment; and~~

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

27 In such cases, the extent of work disability is determined by averaging
28 together the percentage of post-injury task loss demonstrated by the
29 employee to be caused by the injury and the percentage of post-injury
30 wage loss demonstrated by the employee to be caused by the injury.

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

42 (E) "Wage loss" shall mean the difference between the average
43 weekly wage the employee was earning at the time of the injury and the

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

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

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

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

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

41 (3) When an injured worker is eligible to receive an award of work
42 disability, compensation is limited to the value of the work disability as
43 calculated above. In no case shall functional impairment and work

1 disability be awarded together.

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

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

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

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

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

42 Sec. 4. K.S.A. 2017 Supp. 44-508, 44-510d and 44-510e are hereby
43 repealed.

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