

SENATE BILL No. 398

By Committee on Commerce

2-13

1 AN ACT concerning workers compensation; enacting the public service
2 benefits protection act; amending K.S.A. 2013 Supp. 44-501 and
3 repealing the existing section.
4

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

6 Section 1. K.S.A. 2013 Supp. 44-501 is hereby amended to read as
7 follows: 44-501.

8 (a) (1) Compensation for an injury shall be disallowed if such injury
9 to the employee results from:

10 (A) The employee's deliberate intention to cause such injury;

11 (B) the employee's willful failure to use a guard or protection against
12 accident or injury which is required pursuant to any statute and provided
13 for the employee;

14 (C) the employee's willful failure to use a reasonable and proper
15 guard and protection voluntarily furnished the employee by the employer;

16 (D) the employee's reckless violation of their employer's workplace
17 safety rules or regulations; or

18 (E) the employee's voluntary participation in fighting or horseplay
19 with a co-employee for any reason, work related or otherwise.

20 (2) Subparagraphs (B) and (C) of paragraph (1) of subsection (a) shall
21 not apply when it was reasonable under the totality of the circumstances to
22 not use such equipment, or if the employer approved the work engaged in
23 at the time of an accident or injury to be performed without such
24 equipment.

25 (b) (1) (A) The employer shall not be liable under the workers
26 compensation act where the injury, disability or death was contributed to
27 by the employee's use or consumption of alcohol or any drugs, chemicals
28 or any other compounds or substances, including, but not limited to, any
29 drugs or medications which are available to the public without a
30 prescription from a health care provider, prescription drugs or medications,
31 any form or type of narcotic drugs, marijuana, stimulants, depressants or
32 hallucinogens.

33 (B) In the case of drugs or medications which are available to the
34 public without a prescription from a health care provider and prescription
35 drugs or medications, compensation shall not be denied if the employee
36 can show that such drugs or medications were being taken or used in

1 therapeutic doses and there have been no prior incidences of the
 2 employee's impairment on the job as the result of the use of such drugs or
 3 medications within the previous 24 months.

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

| | Confirmatory test cutoff levels (ng/ml) |
|--|---|
| 12 Marijuana metabolite ¹ | 15 |
| 13 Cocaine metabolite ² | 150 |
| 14 Opiates: | |
| 15 Morphine | 2000 |
| 16 Codeine | 2000 |
| 17 6-Acetylmorphine ⁴ | 10 ng/ml |
| 18 Phencyclidine | 25 |
| 19 Amphetamines: | |
| 20 Amphetamine | 500 |
| 21 Methamphetamine ³ | 500 |

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

23 ² Benzoylcegonine.

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

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

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

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

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

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

43 (B) during an autopsy or in the normal course of medical treatment

1 for reasons related to the health and welfare of the injured worker and not
2 at the direction of the employer;

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

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

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

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

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

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

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

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

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

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

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

38 (2) *For events occurring on or after July 1, 2014, in the case of a*
39 *firefighter as defined by K.S.A. 40-1709(b)(1), and amendments thereto, a*
40 *law enforcement officer as defined by K.S.A. 74-5602, and amendments*
41 *thereto, a corrections officer as defined by K.S.A. 75-5202, and*
42 *amendments thereto, or a juvenile corrections officer as defined by K.S.A.*
43 *38-2302, and amendments thereto, coronary or coronary artery disease or*

1 *cerebrovascular injury shall be compensable if:*

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

4 (B) *the specific event was the prevailing factor in causing the*
5 *coronary or coronary artery disease or cerebrovascular injury.*

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

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

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

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

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

42 (B) In all other cases, the employer against whom benefits are
43 currently being sought shall be entitled to a credit for the percentage of

1 preexisting impairment.

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

18 New Sec. 2. The 2014 amendments to K.S.A. 44-501, and
19 amendments thereto, shall be known as the public service benefits
20 protection act.

21 Sec. 3. K.S.A. 2013 Supp. 44-501 is hereby repealed.

22 Sec. 4. This act shall take effect and be in force from and after its
23 publication in the statute book.