AN ACT concerning workers compensation; relating to medical guides for the determination of impairment; amending K.S.A. 2018 Supp. 44-510d and 44-510e and repealing the existing sections.

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

Section 1. K.S.A. 2018 Supp. 44-510d is hereby amended to read as follows: 44-510d.(a) Where disability, partial in character but permanent in quality, results from the injury, the injured employee shall be entitled to the compensation provided in K.S.A. 44-510h and 44-510i, and amendments thereto. The injured employee may be entitled to payment of temporary total disability as defined in K.S.A. 44-510c, and amendments thereto, or temporary partial disability as defined in subsection (a)(1) of K.S.A. 44-510e(a)(1), and amendments thereto, provided that the injured employee shall not be entitled to any other or further compensation for or during the first week following the injury unless such disability exists for three consecutive weeks, in which event compensation shall be paid for the first week. Thereafter compensation shall be paid for temporary total or temporary partial disability as provided in the following schedule, 66 2/3% of the average weekly wages to be computed as provided in K.S.A. 44-511, and amendments thereto, except that in no case shall the weekly compensation be more than the maximum as provided for in K.S.A. 44-510c, and amendments thereto.

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

1. For loss of a thumb, 60 weeks.
2. For the loss of a first finger, commonly called the index finger, 37 weeks.
3. For the loss of a second finger, 30 weeks.
4. For the loss of a third finger, 20 weeks.
5. For the loss of a fourth finger, commonly called the little finger, 15 weeks.
6. Loss of the first phalange of the thumb or of any finger shall be considered to be equal to the loss of 1/2 of such thumb or finger, and the compensation shall be 1/2 of the amount specified above. The loss of the
first phalange and any part of the second phalange of any finger, which
includes the loss of any part of the bone of such second phalange, shall be
considered to be equal to the loss of $\frac{2}{3}$ of such finger and the
compensation shall be $\frac{2}{3}$ of the amount specified above. The loss of the
first phalange and any part of the second phalange of a thumb, which
includes the loss of any part of the bone of such second phalange, shall be
considered to be equal to the loss of the entire thumb. The loss of the first
and second phalanges, and any part of the third proximal phalange of any
finger, shall be considered as the loss of the entire finger. Amputation
through the joint shall be considered a loss to the next higher schedule.

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

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

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

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

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

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

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

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

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

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

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

(18) Amputation or severance below the wrist shall be considered as
the loss of a hand. Amputation at the wrist and below the elbow shall be
considered as the loss of the forearm. Amputation at or above the elbow
shall be considered loss of the arm. Amputation below the ankle shall be
considered loss of the foot. Amputation at the ankle and below the knee
shall be considered as loss of the lower leg. Amputation at or above the
knee shall be considered as loss of the leg.

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

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

(21) Permanent loss of the use of a finger, thumb, hand, shoulder,
arm, forearm, toe, foot, leg or lower leg or the permanent loss of the sight
of an eye or the hearing of an ear, shall be equivalent to the loss thereof.
For the permanent partial loss of the use of a finger, thumb, hand,
shoulder, arm, toe, foot or leg, or the sight of an eye or the hearing of an
ear, compensation shall be paid as provided for in K.S.A. 44-510c, and
amendments thereto, per week during that proportion of the number of weeks in the foregoing schedule provided for the loss of such finger, thumb, hand, shoulder, arm, toe, foot or leg or the sight of an eye or the hearing of an ear, which partial loss thereof bears to the total loss of a finger, thumb, hand, shoulder, arm, toe, foot or leg, or the sight of an eye or the hearing of an ear; but in no event shall the compensation payable hereunder for such partial loss exceed the compensation payable under the schedule for the total loss of such finger, thumb, hand, arm, toe, foot or leg, or the sight of an eye or the hearing of an ear, exclusive of the healing period. As used in this paragraph (21), "shoulder" means the shoulder joint, shoulder girdle, shoulder musculature or any other shoulder structures.

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

(23) Loss of or loss of use of a scheduled member shall be based upon permanent impairment of function to the scheduled member as determined using the fourth edition of the American medical association guides to the evaluation of permanent impairment, if the impairment is contained therein, until January 1, 2015, but for injuries occurring on and after January 1, 2015, shall be determined by using the sixth edition of the American medical association guides to the evaluation of permanent impairment, if the impairment is contained therein.

(24) Where an injury results in the loss of or loss of use of more than one scheduled member within a single extremity, the functional impairment attributable to each scheduled member shall be combined pursuant to the fourth edition of the American medical association guides for evaluation of permanent impairment until January 1, 2015, but for injuries occurring on and after January 1, 2015, shall be combined pursuant to the sixth edition of the American medical association guides to the evaluation of permanent impairment, and compensation awarded shall be calculated to the highest scheduled member actually impaired.

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

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

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

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

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

Sec. 2. K.S.A. 2018 Supp. 44-510e is hereby amended to read as follows: 44-510e. (a) In case of whole body injury resulting in temporary or permanent partial general disability not covered by the schedule in K.S.A. 44-510d, and amendments thereto, the employee shall receive weekly compensation as determined in this subsection during the period of temporary or permanent partial general disability not exceeding a maximum of 415 weeks.

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

(2) (A) Permanent partial general disability exists when the employee is disabled in a manner which that is partial in character and permanent in quality and which that is not covered by the schedule in K.S.A. 44-510d,
and amendments thereto. Compensation for permanent partial general
disability shall also be paid as provided in this section where an injury
results in:
(i) The loss of or loss of use of a shoulder, arm, forearm or hand of
one upper extremity, combined with the loss of or loss of use of a shoulder,
arm, forearm or hand of the other upper extremity;
(ii) the loss of or loss of use of a leg, lower leg or foot of one lower
extremity, combined with the loss of or loss of use of a leg, lower leg or
foot of the other lower extremity; or
(iii) the loss of or loss of use of both eyes.
(B) The extent of permanent partial general disability shall be the
percentage of functional impairment the employee sustained on account of
the injury as established by competent medical evidence and based on the
fourth edition of the American medical association guides to the evaluation
of permanent impairment, if the impairment is contained therein, until
January 1, 2015, but for injuries occurring on and after January 1, 2015,
based on the sixth edition of the American medical association guides to
the evaluation of permanent impairment, if the impairment is contained
therein.
(C) An employee may be eligible to receive permanent partial general
disability compensation in excess of the percentage of functional
impairment ("work disability") if:
(i) The percentage of functional impairment determined to be caused
solely by the injury exceeds 7½% to the body as a whole or the overall
functional impairment is equal to or exceeds 10% to the body as a whole
in cases where there is preexisting functional impairment; and
(ii) the employee sustained a post-injury wage loss, as defined in
subsection (a)(2)(E) of K.S.A. 44-510e(a)(2)(E), and amendments thereto,
of at least 10% which that is directly attributable to the work injury and
not to other causes or factors.
In such cases, the extent of work disability is determined by averaging
together the percentage of post-injury task loss demonstrated by the
employee to be caused by the injury and the percentage of post-injury
wage loss demonstrated by the employee to be caused by the injury.
(D) "Task loss" shall mean the percentage to which the employee, in
the opinion of a licensed physician, has lost the ability to perform the work
tasks that the employee performed in any substantial gainful employment
during the five-year period preceding the injury. The permanent
restrictions imposed by a licensed physician as a result of the work injury
shall be used to determine those work tasks which that the employee has
lost the ability to perform. If the employee has preexisting permanent
restrictions, any work tasks which that the employee would have been
deemed to have lost the ability to perform, had a task loss analysis been
completed prior to the injury at issue, shall be excluded for the purposes of
calculating the task loss—which is directly attributable to the current
injury.

(E) "Wage loss" shall mean the difference between the average
weekly wage the employee was earning at the time of the injury and the
average weekly wage the employee is capable of earning after the injury.
The capability of a worker to earn post-injury wages shall be established
based upon a consideration of all factors, including, but not limited to, the
injured worker's age, physical capabilities, education and training, prior
experience, and availability of jobs in the open labor market. The
administrative law judge shall impute an appropriate post-injury average
weekly wage based on such factors. Where the employee is engaged in
post-injury employment for wages, there shall be a rebuttable presumption
that the average weekly wage an injured worker is actually earning
constitutes the post-injury average weekly wage that the employee is
capable of earning. The presumption may be overcome by competent
evidence.

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

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

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

(F) The amount of compensation for whole body injury under this
section shall be determined by multiplying the payment rate by the weeks
payable. As used in this section:

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

2. (ii) weeks payable shall be determined as follows:
  (A) Determine the weeks of temporary compensation paid by
  adding the amounts of temporary total and temporary partial disability
  compensation paid and dividing the sum by the payment rate above;
  (B) subtract from 415 weeks the total number of weeks of
temporary compensation paid as determined in subparagraph (F)(2)(A)(ii)
(a), excluding the first 15 such weeks; and

(3)(iii) multiply the number of weeks as determined in subparagraph (F)(2)(B)(ii)(b) by the percentage of functional impairment pursuant to subsection (a)(2)(B) or the percentage of work disability pursuant to subsection (a)(2)(C), whichever is applicable.

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

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

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

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

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

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

New Sec. 3. If any clause, paragraph, subsection or section of this act
is held invalid or unconstitutional, it shall be conclusively presumed that
the legislature would have enacted the remainder of this act without such
invalid or unconstitutional clause, paragraph, subsection or section.

Sec. 4. K.S.A. 2018 Supp. 44-510d and 44-510e are hereby repealed.

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