

**SENATE BILL No. 92**

By Senators Holland, Bollier, Doll, Faust-Goudeau, Francisco, Hawk, Hensley and  
Pettesy

2-4

1 AN ACT concerning workers compensation; relating to the use of medical  
2 guides for the determination of impairment; amending K.S.A. 2018  
3 Supp. 44-510d and 44-510e and repealing the existing sections.  
4

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

6 Section 1. K.S.A. 2018 Supp. 44-510d is hereby amended to read as  
7 follows: 44-510d. (a) Where disability, partial in character but permanent  
8 in quality, results from the injury, the injured employee shall be entitled to  
9 the compensation provided in K.S.A. 44-510h and 44-510i, and  
10 amendments thereto. The injured employee may be entitled to payment of  
11 temporary total disability as defined in K.S.A. 44-510c, and amendments  
12 thereto, or temporary partial disability as defined in ~~subsection (a)(1) of~~  
13 K.S.A. 44-510e(a)(1), and amendments thereto, provided that the injured  
14 employee shall not be entitled to any other or further compensation for or  
15 during the first week following the injury unless such disability exists for  
16 three consecutive weeks, in which event compensation shall be paid for  
17 the first week. Thereafter compensation shall be paid for temporary total or  
18 temporary partial disability as provided in the following schedule,  $66\frac{2}{3}\%$   
19 of the average weekly wages to be computed as provided in K.S.A. 44-  
20 511, and amendments thereto, except that in no case shall the weekly  
21 compensation be more than the maximum as provided for in K.S.A. 44-  
22 510c, and amendments thereto.

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

- 27 (1) For loss of a thumb, 60 weeks.  
28 (2) For the loss of a first finger, commonly called the index finger, 37  
29 weeks.  
30 (3) For the loss of a second finger, 30 weeks.  
31 (4) For the loss of a third finger, 20 weeks.  
32 (5) For the loss of a fourth finger, commonly called the little finger,  
33 15 weeks.  
34 (6) Loss of the first phalange of the thumb or of any finger shall be  
35 considered to be equal to the loss of  $\frac{1}{2}$  of such thumb or finger, and the

1 compensation shall be  $\frac{1}{2}$  of the amount specified above. The loss of the  
2 first phalange and any part of the second phalange of any finger, which  
3 includes the loss of any part of the bone of such second phalange, shall be  
4 considered to be equal to the loss of  $\frac{2}{3}$  of such finger and the  
5 compensation shall be  $\frac{2}{3}$  of the amount specified above. The loss of the  
6 first phalange and any part of the second phalange of a thumb which  
7 includes the loss of any part of the bone of such second phalange, shall be  
8 considered to be equal to the loss of the entire thumb. The loss of the first  
9 and second phalanges and any part of the third proximal phalange of any  
10 finger, shall be considered as the loss of the entire finger. Amputation  
11 through the joint shall be considered a loss to the next higher schedule.

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

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

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

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

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

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

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

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

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

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

28 (17) For the loss of an eye, or the complete loss of the sight thereof,  
29 120 weeks.

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

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

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

39 (21) Permanent loss of the use of a finger, thumb, hand, shoulder,  
40 arm, forearm, toe, foot, leg or lower leg or the permanent loss of the sight  
41 of an eye or the hearing of an ear, shall be equivalent to the loss thereof.  
42 For the permanent partial loss of the use of a finger, thumb, hand,  
43 shoulder, arm, toe, foot or leg, or the sight of an eye or the hearing of an

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

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

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

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

40 (c) Whenever the employee is entitled to compensation for a specific  
41 injury under the foregoing schedule, the same shall be exclusive of all  
42 other compensation except the benefits provided in K.S.A. 44-510h and  
43 44-510i, and amendments thereto, and no additional compensation shall be

1 allowable or payable for any temporary or permanent, partial or total  
2 disability, except that the director, in proper cases, may allow additional  
3 compensation during the actual healing period, following amputation. The  
4 healing period shall not be more than 10% of the total period allowed for  
5 the scheduled injury in question nor in any event for longer than 15 weeks.  
6 The return of the employee to the employee's usual occupation shall  
7 terminate the healing period.

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

11 (1) Payment rate shall be the lesser of: (A) The amount determined by  
12 multiplying the average weekly wage of the worker prior to such injury by  
13  $66\frac{2}{3}\%$ ; or (B) the maximum provided in K.S.A. 44-510c, and amendments  
14 thereto;

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

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

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

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

42 (2) (A) Permanent partial general disability exists when the employee  
43 is disabled in a manner which is partial in character and permanent in

1 quality and which is not covered by the schedule in K.S.A. 44-510d, and  
2 amendments thereto. Compensation for permanent partial general  
3 disability shall also be paid as provided in this section where an injury  
4 results in:

5 (i) The loss of or loss of use of a shoulder, arm, forearm or hand of  
6 one upper extremity, combined with the loss of or loss of use of a shoulder,  
7 arm, forearm or hand of the other upper extremity;

8 (ii) the loss of or loss of use of a leg, lower leg or foot of one lower  
9 extremity, combined with the loss of or loss of use of a leg, lower leg or  
10 foot of the other lower extremity; or

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

12 (B) The extent of permanent partial general disability shall be the  
13 percentage of functional impairment the employee sustained on account of  
14 the injury as established by competent medical evidence and based on the  
15 fourth edition of the American medical association guides to the evaluation  
16 of permanent impairment, if the impairment is contained therein, ~~until~~  
17 ~~January 1, 2015, but for injuries occurring on and after January 1, 2015,~~  
18 ~~based on the sixth edition of the American medical association guides to~~  
19 ~~the evaluation of permanent impairment, if the impairment is contained~~  
20 ~~therein.~~

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

24 (i) The percentage of functional impairment determined to be caused  
25 solely by the injury exceeds 7½% to the body as a whole or the overall  
26 functional impairment is equal to or exceeds 10% to the body as a whole  
27 in cases where there is preexisting functional impairment; and

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

32 In such cases, the extent of work disability is determined by averaging  
33 together the percentage of post-injury task loss demonstrated by the  
34 employee to be caused by the injury and the percentage of post-injury  
35 wage loss demonstrated by the employee to be caused by the injury.

36 (D) "Task loss" shall mean the percentage to which the employee, in  
37 the opinion of a licensed physician, has lost the ability to perform the work  
38 tasks that the employee performed in any substantial gainful employment  
39 during the five-year period preceding the injury. The permanent  
40 restrictions imposed by a licensed physician as a result of the work injury  
41 shall be used to determine those work tasks which the employee has lost  
42 the ability to perform. If the employee has preexisting permanent  
43 restrictions, any work tasks which the employee would have been deemed

1 to have lost the ability to perform, had a task loss analysis been completed  
 2 prior to the injury at issue, shall be excluded for the purposes of  
 3 calculating the task loss which is directly attributable to the current injury.

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

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

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

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

31 (F) The amount of compensation for whole body injury under this  
 32 section shall be determined by multiplying the payment rate by the weeks

33 payable. As used in this section: ~~(1)~~ (i) The payment rate shall be the lesser  
 34 of: ~~(A)~~ (a) The amount determined by multiplying the average weekly

35 wage of the worker prior to such injury by 66<sup>2</sup>/<sub>3</sub>%; or ~~(B)~~ (b) the maximum  
 36 provided in K.S.A. 44-510c, and amendments thereto; ~~(2)~~ (ii) weeks

37 payable shall be determined as follows: ~~(A)~~ (a) Determine the weeks of  
 38 temporary compensation paid by adding the amounts of temporary total

39 and temporary partial disability compensation paid and dividing the sum  
 40 by the payment rate above; ~~(B)~~ (b) subtract from 415 weeks the total

41 number of weeks of temporary compensation paid as determined in ~~(F)(2)~~  
 42 ~~(A)~~ subparagraph (F)(ii)(a), excluding the first 15 such weeks; and ~~(3)~~

43 (iii) multiply the number of weeks as determined in ~~(F)(2)(B)~~

1 *subparagraph (F)(ii)(b)* by the percentage of functional impairment  
2 pursuant to subsection (a)(2)(B) or the percentage of work disability  
3 pursuant to subsection (a)(2)(C), whichever is applicable.

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

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

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

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

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

38 (e) In any case of injury to or death of an employee, where the  
39 employee or the employee's dependents are entitled to compensation under  
40 the workers compensation act, such compensation shall be exclusive of all  
41 other remedies or causes of action for such injury or death, and no claim or  
42 action shall inure, accrue to or exist in favor of the surviving spouse or any  
43 relative or next of kin of such employee against such employer on account

1 of any damage resulting to such surviving spouse or any relative or next of  
2 kin on account of the loss of earnings, services, or society of such  
3 employee or on any other account resulting from or growing out of the  
4 injury or death of such employee.

5 Sec. 3. K.S.A. 2018 Supp. 44-510d and 44-510e are hereby repealed.

6 Sec. 4. This act shall take effect and be in force from and after its  
7 publication in the Kansas register.