

HOUSE BILL No. 2393

By Committee on Federal and State Affairs

2-17

1 AN ACT concerning workers compensation; relating to post-traumatic
2 stress disorder suffered by first responders; amending K.S.A. 2020
3 Supp. 44-508 and repealing the existing section.

4
5 *Be it enacted by the Legislature of the State of Kansas:*

6 New Section 1. (a) For purposes of this subsection:

7 (1) "Post-traumatic stress disorder" means the same as such term is
8 defined in the diagnostic and statistical manual of mental disorders, fifth
9 edition (DSM-5, 2013), of the American psychiatric association, diagnosed
10 by a licensed psychiatrist or licensed psychologist.

11 (2) "First responder" means a firefighter as defined by K.S.A. 40-
12 1709(b)(1), and amendments thereto, law enforcement officer as defined
13 by K.S.A. 74-5602(g), and amendments thereto, or emergency medical
14 service provider as defined by K.S.A. 65-6112(h), and amendments
15 thereto. "First responder" includes a firefighter, law enforcement officer or
16 emergency medical service provider whether paid or serving as a duly
17 authorized volunteer.

18 (b) Post-traumatic stress disorder suffered by a first responder is
19 compensable if it arises out of and in the course of employment, whether
20 paid or as a duly authorized volunteer, and regardless of whether there is a
21 corresponding physical injury.

22 (c) In the case of post-traumatic stress disorder suffered by a first
23 responder while employed or serving as a duly authorized volunteer for the
24 employer against whom benefits are sought, the date of injury shall be the
25 earliest of the date the first responder:

26 (1) Is taken off work by a licensed psychiatrist or licensed
27 psychologist due to the diagnosed post-traumatic stress disorder;

28 (2) is placed on modified or restricted duty by a licensed psychiatrist
29 or licensed psychologist due to the diagnosed post-traumatic stress
30 disorder;

31 (3) is advised by a licensed psychiatrist or licensed psychologist that
32 the diagnosed post-traumatic stress disorder is work-related; or

33 (4) last worked or volunteered, unless, prior to the last day worked or
34 volunteered, the first responder sought the attention of a physician, or a
35 licensed psychologist, licensed psychiatrist or other mental healthcare
36 professional licensed to practice psychology or mental health counseling,

1 for a condition that was subsequently diagnosed as post-traumatic stress
2 disorder by a licensed psychiatrist or licensed psychologist within three
3 months of such last day worked or volunteered and in such case, the date
4 of diagnosis shall be the date of injury.

5 (d) Notwithstanding the provisions of K.S.A. 44-520(a)(1), and
6 amendments thereto, proceedings for compensation under the workers
7 compensation act for post-traumatic stress disorder suffered by a first
8 responder shall be maintainable if notice is given to the employer not later
9 than 20 calendar days after the date of injury as provided by subsection
10 (c).

11 (e) The provisions of K.S.A. 44-501(b)(1)(A), and amendments
12 thereto, if otherwise found to be applicable, shall not bar a claim by a first
13 responder under this section where the first responder's use of alcohol or
14 drugs is attributable to the condition diagnosed as post-traumatic stress
15 disorder and, the first responder enters into alcohol or substance abuse
16 treatment or counseling ordered by the licensed psychiatrist or licensed
17 psychologist who diagnosed the post-traumatic stress disorder.

18 (f) This section shall be a part of and supplemental to the workers
19 compensation act.

20 Sec. 2. K.S.A. 2020 Supp. 44-508 is hereby amended to read as
21 follows: 44-508. As used in the workers compensation act:

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

1 or multiple employment.

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

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

37 (2) "Members of a family" means only surviving legal spouse and
38 children; or if no surviving legal spouse or children, then parents or
39 grandparents; or if no parents or grandparents, then grandchildren; or if no
40 grandchildren, then brothers and sisters. In the meaning of this section,
41 parents include stepparents, children include stepchildren, grandchildren
42 include stepgrandchildren, brothers and sisters include stepbrothers and
43 stepsisters, and children and parents include that relation by legal

1 adoption. In the meaning of this section, a surviving spouse shall not be
2 regarded as a dependent of a deceased employee or as a member of the
3 family, if the surviving spouse shall have for more than six months
4 willfully or voluntarily deserted or abandoned the employee prior to the
5 date of the employee's death.

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

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

9 (B) a stepchild of the employee who lives in the employee's
10 household;

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

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

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

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

33 In the case of injury by repetitive trauma, the date of injury shall be the
34 earliest of:

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

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

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

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

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

4 (f) (1) "Personal injury" and "injury" mean any lesion or change in
5 the physical structure of the body, causing damage or harm thereto. *In the*
6 *case of a first responder, as defined in section 1, and amendments thereto,*
7 *"personal injury" and "injury" includes post-traumatic stress disorder as*
8 *defined by section 1, and amendments thereto. Except as provided by*
9 *section 1, and amendments thereto, "personal injury" or "injury" may*
10 *occur only by accident, repetitive trauma or occupational disease as those*
11 *terms are defined.*

12 (2) An injury is compensable only if it arises out of and in the course
13 of employment. An injury is not compensable because work was a
14 triggering or precipitating factor. An injury is not compensable solely
15 because it aggravates, accelerates or exacerbates a preexisting condition or
16 renders a preexisting condition symptomatic.

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

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

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

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

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

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

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

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

34 (i) Injury that occurred as a result of the natural aging process or by
35 the normal activities of day-to-day living;

36 (ii) accident or injury that arose out of a neutral risk with no
37 particular employment or personal character;

38 (iii) accident or injury that arose out of a risk personal to the worker;
39 or

40 (iv) accident or injury that arose either directly or indirectly from
41 idiopathic causes.

42 (B) The words "arising out of and in the course of employment" as
43 used in the workers compensation act shall not be construed to include

1 injuries to the employee occurring while the employee is on the way to
2 assume the duties of employment or after leaving such duties, the
3 proximate cause of which injury is not the employer's negligence. An
4 employee shall not be construed as being on the way to assume the duties
5 of employment or having left such duties at a time when the worker is on
6 the premises owned or under the exclusive control of the employer or on
7 the only available route to or from work that is a route involving a special
8 risk or hazard connected with the nature of the employment, that is not a
9 risk or hazard to which the general public is exposed and that is a route not
10 used by the public except in dealings with the employer. An employee
11 shall not be construed as being on the way to assume the duties of
12 employment, if the employee is a provider of emergency services
13 responding to an emergency.

14 (C) The words "arising out of and in the course of employment" as
15 used in the workers compensation act shall not be construed to include
16 injuries to employees while engaged in recreational or social events under
17 circumstances where the employee was under no duty to attend and where
18 the injury did not result from the performance of tasks related to the
19 employee's normal job duties or as specifically instructed to be performed
20 by the employer.

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

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

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

32 (j) "Healthcare provider" means any person licensed, by the proper
33 licensing authority of this state, another state or the District of Columbia,
34 to practice medicine and surgery, osteopathy, chiropractic, dentistry,
35 optometry, podiatry, audiology or psychology.

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

37 (l) "Construction design professional" means any person who is an
38 architect, professional engineer, landscape architect or land surveyor who
39 has been issued a license by the state board of technical professions to
40 practice such technical profession in Kansas or any corporation organized
41 to render professional services through the practice of one or more of such
42 technical professions in Kansas under the professional corporation law of
43 Kansas or any corporation issued a certificate of authorization under

1 K.S.A. 74-7036, and amendments thereto, to practice one or more of such
2 technical professions in Kansas.

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

10 (n) "Utilization review" means the initial evaluation of
11 appropriateness in terms of both the level and the quality of healthcare and
12 health services provided to a patient, based on accepted standards of the
13 healthcare profession involved. Such evaluation is accomplished by means
14 of a system that identifies the utilization of healthcare services above the
15 usual range of utilization for such services, that is based on accepted
16 standards of the healthcare profession involved and that refers instances of
17 possible inappropriate utilization to the director for referral to a peer
18 review committee.

19 (o) "Peer review" means an evaluation by a peer review committee of
20 the appropriateness, quality and cost of healthcare and health services
21 provided a patient that is based on accepted standards of the healthcare
22 profession involved and that is conducted in conjunction with utilization
23 review.

24 (p) "Peer review committee" means a committee composed of
25 healthcare providers licensed to practice the same healthcare profession as
26 the healthcare provider who rendered the healthcare services being
27 reviewed.

28 (q) "Group-funded self-insurance plan" includes each group-funded
29 workers compensation pool that is authorized to operate in this state under
30 K.S.A. 44-581 through 44-592, and amendments thereto, each municipal
31 group-funded pool under the Kansas municipal group-funded pool act that
32 is covering liabilities under the workers compensation act and any other
33 similar group-funded or pooled plan or arrangement that provides
34 coverage for employer liabilities under the workers compensation act and
35 is authorized by law.

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

39 (s) "Usual charge" means the amount most commonly charged by
40 healthcare providers for the same or similar services.

41 (t) "Customary charge" means the usual rates or range of fees charged
42 by healthcare providers in a given locale or area.

43 (u) "Functional impairment" means the extent, expressed as a

1 percentage, of the loss of a portion of the total physiological capabilities of
2 the human body as established by competent medical evidence and based
3 on the fourth edition of the American medical association guides to the
4 evaluation of impairment, if the impairment is contained therein.

5 (v) "Authorized treating physician" means a licensed physician or
6 other healthcare provider authorized by the employer or insurance carrier,
7 or both, or appointed pursuant to court-order to provide those medical
8 services deemed necessary to diagnose and treat an injury arising out of
9 and in the course of employment.

10 (w) "Mail" means the use of the United States postal service or other
11 land based delivery service or transmission by electronic means, including
12 delivery by fax, e-mail or other electronic delivery method designated by
13 the director of workers compensation.

14 Sec. 3. K.S.A. 2020 Supp. 44-508 is hereby repealed.

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