

As Amended by House Committee

As Amended by Senate Committee

Session of 2004

SENATE BILL No. 441

By Committee on Commerce

2-4

12 AN ACT concerning workers compensation; relating to the date of ac-
13 cident; amending K.S.A. 2003 Supp. 44-508 and repealing the existing
14 section.

15

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

17 Section 1. K.S.A. 2003 Supp. 44-508 is hereby amended to read as
18 follows: 44-508. As used in the workers compensation act:

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

42 (b) "Workman" or "employee" or "worker" means any person who
43 has entered into the employment of or works under any contract of serv-

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

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

35 (2) "Members of a family" means only surviving legal spouse and
36 children; or if no surviving legal spouse or children, then parents or grand-
37 parents; or if no parents or grandparents, then grandchildren; or if no
38 grandchildren, then brothers and sisters. In the meaning of this section,
39 parents include stepparents, children include stepchildren, grandchildren
40 include stepgrandchildren, brothers and sisters include stepbrothers and
41 stepsisters, and children and parents include that relation by legal adop-
42 tion. In the meaning of this section, a surviving spouse shall not be re-
43 garded as a dependent of a deceased employee or as a member of the

1 family, if the surviving spouse shall have for more than six months willfully
2 or voluntarily deserted or abandoned the employee prior to the date of
3 the employee's death.

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

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

7 (B) a stepchild of the employee who lives in the employee's
8 household;

9 (C) any other child who is actually dependent in whole or in part on
10 the employee and who is related to the employee by marriage or consan-
11 guinity; or

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

17 (d) "Accident" means an undesigned, sudden and unexpected event
18 or events, usually of an afflictive or unfortunate nature and often, but not
19 necessarily, accompanied by a manifestation of force. The elements of an
20 accident, as stated herein, are not to be construed in a strict and literal
21 sense, but in a manner designed to effectuate the purpose of the workers
22 compensation act that the employer bear the expense of accidental injury
23 to a worker caused by the employment. *In cases where the accident occurs*
24 *as a result of a series of events, repetitive use, cumulative traumas or micro*
25 *traumas, the date of accident shall be the earliest of the following dates:*
26 *(1) The date upon which the employee gives ~~written~~ notice to the em-*
27 *ployer of the injury; (2) the date the condition is diagnosed as work-*
28 *related, providing such fact is communicated ~~in writing~~ to the injured*
29 *worker; or (3) the first day the authorized physician takes the employee*
30 *off work due to the condition or restricts the employee from performing*
31 *the work which is the cause of the condition.*

32 (e) "Personal injury" and "injury" mean any lesion or change in the
33 physical structure of the body, causing damage or harm thereto, so that
34 it gives way under the stress of the worker's usual labor. It is not essential
35 that such lesion or change be of such character as to present external or
36 visible signs of its existence. An injury shall not be deemed to have been
37 directly caused by the employment where it is shown that the employee
38 suffers disability as a result of the natural aging process or by the normal
39 activities of day-to-day living.

40 (f) The words "arising out of and in the course of employment" as
41 used in the workers compensation act shall not be construed to include
42 injuries to the employee occurring while the employee is on the way to
43 assume the duties of employment or after leaving such duties, the prox-

1 imate cause of which injury is not the employer's negligence. An em-
2 ployee shall not be construed as being on the way to assume the duties
3 of employment or having left such duties at a time when the worker is
4 on the premises of the employer or on the only available route to or from
5 work which is a route involving a special risk or hazard and which is a
6 route not used by the public except in dealings with the employer. An
7 employee shall not be construed as being on the way to assume the duties
8 of employment, if the employee is a provider of emergency services re-
9 sponding to an emergency.

10 The words, "arising out of and in the course of employment" as used
11 in the workers compensation act shall not be construed to include injuries
12 to employees while engaged in recreational or social events under cir-
13 cumstances where the employee was under no duty to attend and where
14 the injury did not result from the performance of tasks related to the
15 employee's normal job duties or as specifically instructed to be performed
16 by the employer.

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

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

23 (i) "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, op-
26 tometry, podiatry, audiology or psychology.

27 (j) "Secretary" means the secretary of human resources.

28 (k) "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
33 such technical professions in Kansas under the professional corporation
34 law of Kansas or any corporation issued a certificate of authorization un-
35 der K.S.A. 74-7036 and amendments thereto to practice one or more of
36 such technical professions in Kansas.

37 (l) "Community service work" means: (1) Public or community serv-
38 ice performed as a result of a contract of diversion or of assignment to a
39 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 of social and rehabilita-

1 tion services.

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

11 (n) “Peer review” means an evaluation by a peer review committee
12 of the appropriateness, quality and cost of health care and health services
13 provided a patient, which is based on accepted standards of the health
14 care profession involved and which is conducted in conjunction with util-
15 ization review.

16 (o) “Peer review committee” means a committee composed of health
17 care providers licensed to practice the same health care profession as the
18 health care provider who rendered the health care services being
19 reviewed.

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

28 (q) On and after the effective date of this act, “workers compensation
29 board” or “board” means the workers compensation board established
30 under K.S.A. 44-555c and amendments thereto.

31 (r) “Usual charge” means the amount most commonly charged by
32 health care providers for the same or similar services.

33 (s) “Customary charge” means the usual rates or range of fees
34 charged by health care providers in a given locale or area.

35 Sec. 2. K.S.A. 2003 Supp. 44-508 is hereby repealed.

36 Sec. 3. This act shall take effect and be in force from and after its
37 publication in the statute book.