

HOUSE BILL No. 2018

By Representative Sawyer

6-3

1 AN ACT concerning workers compensation; relating to occupational
2 diseases; COVID-19; amending K.S.A. 2019 Supp. 44-5a01 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. 2019 Supp. 44-5a01 is hereby amended to read as
7 follows: 44-5a01. (a) Where the employer and employee or workman are
8 subject by law or election to the provisions of the workmen's
9 compensation act, the disablement or death of an employee or workman
10 resulting from an occupational disease as defined in this section shall be
11 treated as the happening of an injury by accident, and the employee or
12 workman or, in case of death, his dependents shall be entitled to
13 compensation for such disablement or death resulting from an
14 occupational disease, in accordance with the provisions of the workmen's
15 compensation act as in cases of injuries by accident ~~which that~~ are
16 compensable thereunder, except as specifically provided otherwise for
17 occupational diseases, *including as provided for the occupational disease*
18 *of COVID-19 pursuant to subsection (g)*. In no circumstances shall an
19 occupational disease be construed to include injuries caused by repetitive
20 trauma as defined in K.S.A. 44-508, and amendments thereto.

21 (b) "Occupational disease" ~~shall mean~~ *means a diagnosis of COVID-*
22 *19, as provided by subsection (g), or only a disease arising out of and in*
23 *the course of the employment resulting from the nature of the employment*
24 *in which the employee was engaged under such employer, and ~~which that~~*
25 *was actually contracted while so engaged. "Nature of the employment"*
26 ~~shall mean~~ *means, for purposes of this section, that to the occupation, trade*
27 *or employment in which the employee was engaged, there is attached a*
28 *particular and peculiar hazard of such disease ~~which that~~ distinguishes the*
29 *employment from other occupations and employments; and ~~which that~~*
30 *creates a hazard of such disease ~~which that~~ is in excess of the hazard of*
31 *such disease in general. Except as provided by subsection (g), the disease*
32 *must appear to have had its origin in a special risk of such disease*
33 *connected with the particular type of employment and to have resulted*
34 *from that source as a reasonable consequence of the risk. Ordinary*
35 *diseases of life and conditions ~~to which that~~ the general public is or may*
36 *be exposed to outside of the particular employment, and hazards of*

1 diseases and conditions attending employment in general, shall not be
2 compensable as occupational diseases, except that compensation shall not
3 be payable for pulmonary emphysema or other types of emphysema unless
4 it is proved, by clear and convincing medical evidence to a reasonable
5 probability, that such emphysema was caused, solely and independently of
6 all other causes, by the employment with the employer against whom the
7 claim is made, except that, if it is proved to a reasonable medical
8 probability that an existing emphysema was aggravated and contributed to
9 by the employment with the employer against whom the claim is made,
10 compensation shall be payable for the resulting condition of the workman,
11 but only to the extent such condition was so contributed to and aggravated
12 by the employment.

13 (c) In no case shall an employer be liable for compensation under this
14 section unless disablement results within one year or death results within
15 three years in case of silicosis, or one year in case of any other
16 occupational disease, after the last injurious exposure to the hazard of such
17 disease in such employment, or, in case of death, unless death follows
18 continuous disability from such disease, commencing within the period
19 above limited, for which compensation has been paid or awarded or timely
20 claim made as provided in the workmen's compensation act, and results
21 within seven years after such last exposure. Where payments have been
22 made on account of any disablement from which death shall thereafter
23 result such payments shall be deducted from the amount of liability
24 provided by law in case of death. The time limit prescribed by this section
25 shall not apply in the case of an employee whose disablement or death is
26 due to occupational exposure to ionizing radiation.

27 (d) Where an occupational disease is aggravated by any disease or
28 infirmity, not itself compensable, or where disability or death from any
29 other cause, not itself compensable, is aggravated, prolonged, accelerated
30 or in any wise contributed to by an occupational disease, the compensation
31 payable shall be reduced and limited to such proportion only of the
32 compensation that would be payable if the occupational disease were the
33 sole cause of the disability or death, as such occupational disease, as a
34 causative factor, bears to all the causes of such disability or death, such
35 reduction in compensation to be effected by reducing the number of
36 weekly or monthly payments or the amounts of such payments, as under
37 the circumstances of the particular case may be for the best interest of the
38 claimant or claimants.

39 (e) No compensation for death from an occupational disease shall be
40 payable to any person whose relationship to the deceased employee or
41 workman arose subsequent to the beginning of the first compensable
42 disability save only to afterborn children.

43 (f) The provisions of K.S.A. 44-570, and amendments thereto, shall

1 apply in case of an occupational disease.

2 (g) (1) *Notwithstanding any provisions of the workers compensation*
3 *act to the contrary, the following provisions shall apply to a claim based*
4 *on a diagnosis of COVID-19.*

5 (A) *In the case of employment that includes contact with or work in*
6 *proximity to or in the same space as the public or co-workers, there shall*
7 *be a rebuttable presumption that the COVID-19 disease arose out of and*
8 *in the course of the employment in which the employee was engaged under*
9 *such employer and was contracted while the employee was so engaged,*
10 *and that the employment was the prevailing factor in causing the COVID-*
11 *19. In any event in such a case, a requirement that the COVID-19 resulted*
12 *from the nature of the employment, as defined in subsection (b), shall not*
13 *apply. The claimant shall not be required to prove that the COVID-19*
14 *resulted from the nature of the employment, as defined in subsection (b),*
15 *and had its origin in a special risk of such disease connected with the*
16 *particular type of employment and resulted from that source.*

17 (B) *A claim shall not be denied on the basis that the disease of*
18 *COVID-19 is considered an ordinary disease of life or a hazard of disease*
19 *attending employment in general.*

20 (C) *There shall be a rebuttable presumption that the COVID-19 was*
21 *the sole cause or the prevailing factor of any resulting disability,*
22 *disablement, impairment or death.*

23 (2) *The provisions of this subsection shall be effective retroactively to*
24 *January 1, 2020.*

25 (3) *The provisions of this subsection shall expire on May 1, 2021,*
26 *unless the legislature acts to reauthorize such provisions.*

27 (4) *If any provision of this subsection or the application thereof to*
28 *any person or circumstances is held invalid, such invalidity shall not affect*
29 *other provisions or applications of this subsection that can be given effect*
30 *without the invalid provision or application, and to this end the provisions*
31 *of this subsection are declared to be severable.*

32 Sec. 2. K.S.A. 2019 Supp. 44-5a01 is hereby repealed.

33 Sec. 3. This act shall take effect and be in force from and after its
34 publication in the Kansas register.