

**SENATE BILL No. 491**

By Committee on Judiciary

2-10

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

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. 44-508 is hereby amended to read as follows: 44-508.  
21 As used in the workers compensation act:

22 (a) "Employer" includes:

23 (1) Any person or body of persons, corporate or unincorporated, and  
24 the legal representative of a deceased employer or the receiver or trustee of  
25 a person, corporation, association or partnership;

26 (2) the state or any department, agency or authority of the state, any  
27 city, county, school district or other political subdivision or municipality or  
28 public corporation and any instrumentality thereof; and

29 (3) for the purposes of community service work, the entity for which  
30 the community service work is being performed and the governmental  
31 agency that assigned the community service work, if any, if either such  
32 entity or such governmental agency has filed a written statement of  
33 election with the director to accept the provisions under the workers  
34 compensation act for persons performing community service work and in  
35 such case such entity and such governmental agency shall be deemed to be  
36 the joint employer of the person performing the community service work  
37 and both shall have the rights, liabilities and immunities provided under  
38 the workers compensation act for an employer with regard to the  
39 community service work, except that the liability for providing benefits  
40 shall be imposed only on the party that filed such election with the director  
41 or on both if both parties have filed such election with the director; for  
42 purposes of community service work, "governmental agency" shall not  
43 include any court or any officer or employee thereof and any case where

1 there is deemed to be a "joint employer" shall not be construed to be a case  
2 of dual or multiple employment.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 work-related; or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

43 (B) The words "arising out of and in the course of employment" as

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

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

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

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

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

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

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

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

1 Kansas or any corporation issued a certificate of authorization under  
2 K.S.A. 74-7036, and amendments thereto, to practice one or more of such  
3 technical professions in Kansas.

4 (m) "Community service work" means:

5 (1) Public or community service performed as a result of a contract of  
6 diversion or of assignment to a community corrections program or  
7 conservation camp or suspension of sentence or as a condition of probation  
8 or in lieu of a fine imposed by court order; or

9 (2) public or community service or other work performed as a  
10 requirement for receipt of any kind of public assistance in accordance with  
11 any program administered by the secretary for children and families.

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

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

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

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

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

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

43 (t) "Customary charge" means the usual rates or range of fees charged

1 by healthcare providers in a given locale or area.

2 (u) "Functional impairment" means the extent, expressed as a  
3 percentage, of the loss of a portion of the total physiological capabilities of  
4 the human body as established by competent medical evidence and based  
5 on the fourth edition of the American medical association guides to the  
6 evaluation of impairment, if the impairment is contained therein.

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

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

16 Sec. 3. K.S.A. 44-508 is hereby repealed.

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