

**HOUSE BILL No. 2012**

By Representative Carmichael

1-10

1 AN ACT concerning workers compensation; relating to the prevailing  
2 factor standard of causation; amending K.S.A. 2018 Supp. 44-508 and  
3 44-510k 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. 44-508 is hereby amended to read as  
7 follows: 44-508. As used in the workers compensation act:

8 (a) "Employer" includes: (1) Any person or body of persons,  
9 corporate or unincorporated, and the legal representative of a deceased  
10 employer or the receiver or trustee of a person, corporation, association or  
11 partnership; (2) the state or any department, agency or authority of the  
12 state, any city, county, school district or other political subdivision or  
13 municipality or public corporation and any instrumentality thereof; and (3)  
14 for the purposes of community service work, the entity for which the  
15 community service work is being performed and the governmental agency  
16 ~~which~~ that assigned the community service work, if any, if either such  
17 entity or such governmental agency has filed a written statement of  
18 election with the director to accept the provisions under the workers  
19 compensation act for persons performing community service work and in  
20 such case such entity and such governmental agency shall be deemed to be  
21 the joint employer of the person performing the community service work  
22 and both shall have the rights, liabilities and immunities provided under  
23 the workers compensation act for an employer with regard to the  
24 community service work, except that the liability for providing benefits  
25 shall be imposed only on the party ~~which~~ that filed such election with the  
26 director, or on both if both parties have filed such election with the  
27 director; for purposes of community service work, "governmental agency"  
28 shall not include any court or any officer or employee thereof and any case  
29 where there is deemed to be a "joint employer" shall not be construed to be  
30 a case of dual or multiple employment.

31 (b) "Workman" or "employee" or "worker" means any person who  
32 has entered into the employment of or works under any contract of service  
33 or apprenticeship with an employer. Such terms shall include, but not be  
34 limited to: Executive officers of corporations; professional athletes;  
35 persons serving on a volunteer basis as duly authorized law enforcement  
36 officers, attendants, as defined in ~~subsection (f) of~~ K.S.A. 65-6112(f), and

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

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

31 (2) "Members of a family" means only surviving legal spouse and  
32 children; or if no surviving legal spouse or children, then parents or  
33 grandparents; or if no parents or grandparents, then grandchildren; or if no  
34 grandchildren, then brothers and sisters. In the meaning of this section,  
35 parents include stepparents, children include stepchildren, grandchildren  
36 include stepgrandchildren, brothers and sisters include stepbrothers and  
37 stepsisters, and children and parents include that relation by legal  
38 adoption. In the meaning of this section, a surviving spouse shall not be  
39 regarded as a dependent of a deceased employee or as a member of the  
40 family, if the surviving spouse shall have for more than six months  
41 willfully or voluntarily deserted or abandoned the employee prior to the  
42 date of the employee's death.

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

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

3 (B) a stepchild of the employee who lives in the employee's  
4 household;

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

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

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

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

28 In the case of injury by repetitive trauma, the date of injury shall be the  
29 earliest of:

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

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

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

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

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

42 (f) (1) "Personal injury" and "injury" mean any lesion or change in  
43 the physical structure of the body, causing damage or harm thereto.

1 Personal injury or injury may occur only by accident, repetitive trauma or  
2 occupational disease as those terms are defined.

3 (2) An injury is compensable only if it arises out of and in the course  
4 of employment. ~~An injury is not compensable because work was a~~  
5 ~~triggering or precipitating factor. An injury is not compensable solely~~  
6 ~~because it aggravates, accelerates or exacerbates a preexisting condition or~~  
7 ~~renders a preexisting condition symptomatic.~~

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

10 (i) The employment exposed the worker to an increased risk or  
11 hazard ~~which~~ *that* the worker would not have been exposed in normal non-  
12 employment life;

13 (ii) the increased risk or hazard to which the employment exposed the  
14 worker is ~~the prevailing~~ *a substantial* factor in causing the repetitive  
15 trauma; and

16 (iii) the repetitive trauma is ~~the prevailing~~ *a substantial* factor in  
17 causing ~~both the medical condition and resulting disability or impairment~~  
18 *the injury*.

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

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

23 (ii) the accident is ~~the prevailing~~ *a substantial* factor causing the  
24 injury, ~~medical condition, and resulting disability or impairment.~~

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

27 (i) Injury ~~which~~ *that* occurred as a result of the natural aging process  
28 or by the normal activities of day-to-day living;

29 (ii) accident or injury ~~which~~ *that* arose out of a neutral risk with no  
30 particular employment or personal character; *or*

31 (iii) accident or injury ~~which~~ *that* arose out of a risk personal to the  
32 worker; ~~or~~

33 (iv) ~~accident or injury which arose either directly or indirectly from~~  
34 ~~idiopathic causes.~~

35 (B) The words "arising out of and in the course of employment," as  
36 used in the workers compensation act, shall not be construed to include  
37 injuries to the employee occurring while the employee is on the way to  
38 assume the duties of employment or after leaving such duties, the  
39 proximate cause of which injury is not the employer's negligence. An  
40 employee shall not be construed as being on the way to assume the duties  
41 of employment or having left such duties at a time when the worker is on  
42 the premises owned or under the exclusive control of the employer or on  
43 the only available route to or from work ~~which~~ *that* is a route involving a

1 special risk or hazard connected with the nature of the employment that is  
2 not a risk or hazard to which the general public is exposed and ~~which that~~  
3 is a route not used by the public except in dealings with the employer. An  
4 employee shall not be construed as being on the way to assume the duties  
5 of employment, if the employee is a provider of emergency services  
6 responding to an emergency.

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

14 (g) ~~"Prevailing"~~ *"Substantial,"* as it relates to the term "factor," means  
15 the primary factor, in relation to any other factor. ~~In determining what~~  
16 ~~constitutes the "prevailing factor" in a given case, the administrative law~~  
17 ~~judge shall consider all relevant evidence submitted by the parties~~ *accident*  
18 *was a material element in bringing about the injury, repetitive trauma or*  
19 *occupational disease.*

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

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

27 (j) "Health care provider" means any person licensed, by the proper  
28 licensing authority of this state, another state or the District of Columbia,  
29 to practice medicine and surgery, osteopathy, chiropractic, dentistry,  
30 optometry, podiatry, audiology or psychology.

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

32 (l) "Construction design professional" means any person who is an  
33 architect, professional engineer, landscape architect or land surveyor who  
34 has been issued a license by the state board of technical professions to  
35 practice such technical profession in Kansas or any corporation organized  
36 to render professional services through the practice of one or more of such  
37 technical professions in Kansas under the professional corporation law of  
38 Kansas or any corporation issued a certificate of authorization under  
39 K.S.A. 74-7036, and amendments thereto, to practice one or more of such  
40 technical professions in Kansas.

41 (m) "Community service work" means: (1) Public or community  
42 service performed as a result of a contract of diversion or of assignment to  
43 a community corrections program or conservation camp or suspension of

1 sentence or as a condition of probation or in lieu of a fine imposed by  
2 court order; or (2) public or community service or other work performed  
3 as a requirement for receipt of any kind of public assistance in accordance  
4 with any program administered by the secretary for children and families.

5 (n) "Utilization review" means the initial evaluation of  
6 appropriateness in terms of both the level and the quality of health care  
7 and health services provided a patient, based on accepted standards of the  
8 health care profession involved. Such evaluation is accomplished by  
9 means of a system—~~which that~~ identifies the utilization of health care  
10 services above the usual range of utilization for such services, ~~which that~~  
11 is based on accepted standards of the health care profession involved, and  
12 ~~which that~~ refers instances of possible inappropriate utilization to the  
13 director for referral to a peer review committee.

14 (o) "Peer review" means an evaluation by a peer review committee of  
15 the appropriateness, quality and cost of health care and health services  
16 provided to a patient, ~~which that~~ is based on accepted standards of the  
17 health care profession involved and ~~which that~~ is conducted in conjunction  
18 with utilization review.

19 (p) "Peer review committee" means a committee composed of health  
20 care providers licensed to practice the same health care profession as the  
21 health care provider who rendered the health care services being reviewed.

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

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

33 (s) "Usual charge" means the amount most commonly charged by  
34 health care providers for the same or similar services.

35 (t) "Customary charge" means the usual rates or range of fees charged  
36 by health care providers in a given locale or area.

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

42 (v) "Authorized treating physician" means a licensed physician or  
43 other health care provider authorized by the employer or insurance carrier

1 or both, or appointed pursuant to court-order to provide those medical  
2 services deemed necessary to diagnose and treat an injury arising out of  
3 and in the course of employment.

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

8 Sec. 2. K.S.A. 2018 Supp. 44-510k is hereby amended to read as  
9 follows: 44-510k. (a) (1) At any time after the entry of an award for  
10 compensation wherein future medical benefits were awarded, the  
11 employee, employer or insurance carrier may make application for a  
12 hearing, in such form as the director may require for the furnishing,  
13 termination or modification of medical treatment. Such post-award hearing  
14 shall be held by the assigned administrative law judge, in any county  
15 designated by the administrative law judge, and the judge shall conduct the  
16 hearing as provided in K.S.A. 44-523, and amendments thereto.

17 (2) The administrative law judge can: (A) Make an award for further  
18 medical care if the administrative law judge finds that it is more probably  
19 true than not that the injury ~~which~~ *that* was the subject of the underlying  
20 award is ~~the prevailing~~ *a substantial* factor in the need for further medical  
21 care and that the care requested is necessary to cure or relieve the effects  
22 of such injury; or (B) terminate or modify an award of current or future  
23 medical care if the administrative law judge finds that no further medical  
24 care is required, the injury ~~which~~ *that* was the subject of the underlying  
25 award is not ~~the prevailing~~ *a substantial* factor in the need for further  
26 medical care, or that the care requested is not necessary to cure or relieve  
27 the effects of such injury.

28 (3) If the claimant has not received medical treatment, as defined in  
29 ~~subsection (c) of~~ K.S.A. 44-510h(e), and amendments thereto, from an  
30 authorized health care provider within two years from the date of the  
31 award or two years from the date the claimant last received medical  
32 treatment from an authorized health care provider, the employer shall be  
33 permitted to make application under this section for permanent termination  
34 of future medical benefits. In such case, there shall be a presumption that  
35 no further medical care is needed as a result of the underlying injury. The  
36 presumption may be overcome by competent medical evidence.

37 (4) No post-award benefits shall be ordered, modified or terminated  
38 without giving all parties to the award the opportunity to present evidence,  
39 including taking testimony on any disputed matters. A finding with regard  
40 to a disputed issue shall be subject to a full review by the board under  
41 ~~subsection (b) of~~ K.S.A. 44-551, and amendments thereto. Any action of  
42 the board pursuant to post-award orders shall be subject to review under  
43 K.S.A. 44-556, and amendments thereto.

1 (b) Any application for hearing made pursuant to this section shall  
2 receive priority setting by the administrative law judge, only superseded  
3 by preliminary hearings pursuant to K.S.A. 44-534a, and amendments  
4 thereto. The parties shall meet and confer prior to the hearing pursuant to  
5 this section, but a prehearing settlement conference shall not be necessary.  
6 The administrative law judge shall have authority to award medical  
7 treatment relating back to the entry of the underlying award, but in no  
8 event shall such medical treatment relate back more than six months  
9 following the filing of such application for post-award medical treatment.  
10 Reviews taken under this section shall receive priority settings before the  
11 board, only superseded by reviews for preliminary hearings. A decision  
12 shall be rendered by the board within 30 days from the time the review  
13 hereunder is submitted.

14 (c) The administrative law judge may award attorney fees and costs  
15 on the claimant's behalf consistent with ~~subsection (g)~~ of K.S.A. 44-  
16 536(g), and amendments thereto. As used in this subsection, "costs"  
17 include, but are not limited to, witness fees, mileage allowances, any costs  
18 associated with reproduction of documents that become a part of the  
19 hearing record, the expense of making a record of the hearing and such  
20 other charges as are by statute authorized to be taxed as costs.

21 Sec. 3. K.S.A. 2018 Supp. 44-508 and 44-510k are hereby repealed.

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