

STATE OF KANSAS

HOUSE OF REPRESENTATIVES

MR. CHAIRMAN:

I move to amend **HB 2016**, on page 57, following line 11, by inserting:

"Sec. 41. K.S.A. 2019 Supp. 44-5a01 is hereby amended to read as follows: 44-5a01. (a) Where the employer and employee or ~~workman~~ worker are subject by law or election to the provisions of the ~~workmen's~~ workers compensation act, the disablement or death of an employee or ~~workman~~ worker resulting from an occupational disease as defined in this section shall be treated as the happening of an injury by accident, and the employee or ~~workman~~ worker or, in case of death, ~~his~~ the employee's or worker's dependents shall be entitled to compensation for such disablement or death resulting from an occupational disease, in accordance with the provisions of the ~~workmen's~~ workers compensation act as in cases of injuries by accident ~~which~~ that are compensable thereunder, except as specifically provided otherwise for occupational diseases, including as provided for the occupational disease of COVID-19 pursuant to subsection (g). In no circumstances shall an occupational disease be construed to include injuries caused by repetitive trauma as defined in K.S.A. 44-508, and amendments thereto.

(b) "Occupational disease" ~~shall mean~~ means only a disease arising out of and in the course of the employment resulting from the nature of the employment in which the employee was engaged under such employer, and ~~which~~ that was actually contracted while so engaged, except as provided by subsection (g). "Nature of the employment" ~~shall mean~~ means, for purposes of this section, that to the occupation, trade or employment in which the employee was engaged, there is attached a particular and peculiar hazard of such disease ~~which~~ that distinguishes the employment from other occupations and employments; and ~~which~~ that creates a hazard of such disease ~~which~~ that is in excess of the hazard of

such disease in general. Except as provided by subsection (g), the disease must appear to have had its origin in a special risk of such disease connected with the particular type of employment and to have resulted from that source as a reasonable consequence of the risk. Ordinary diseases of life and conditions ~~to which~~ that the general public is or may be exposed to outside of the particular employment, and hazards of diseases and conditions attending employment in general, shall not be compensable as occupational diseases, except that compensation shall not be payable for pulmonary emphysema or other types of emphysema unless it is proved, by clear and convincing medical evidence to a reasonable probability, that such emphysema was caused, solely and independently of all other causes, by the employment with the employer against whom the claim is made, except that, if it is proved to a reasonable medical probability that an existing emphysema was aggravated and contributed to by the employment with the employer against whom the claim is made, compensation shall be payable for the resulting condition of the workman, but only to the extent such condition was so contributed to and aggravated by the employment.

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

(d) Except as provided by subsection (g), where an occupational disease is aggravated by any

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

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

(f) The provisions of K.S.A. 44-570, and amendments thereto, shall apply in case of an occupational disease.

(g) (1) Notwithstanding any provisions of the workers compensation act to the contrary, the following provisions shall apply to a claim for compensation for death involving a diagnosis of the occupational disease of COVID-19 where the employer against whom the claim is made by the employee's or worker's dependents is the department of corrections and where the deceased employee or worker was engaged in work that involved contact with or work in proximity to or in the same space as a prisoner or inmate.

(A) There shall be a rebuttable presumption that the COVID-19 disease arose out of and in the course of the employment in which the employee was engaged and was contracted while the employee was so engaged, and that the employment was the prevailing factor in causing the COVID-19. In any event in such a case, a requirement that the COVID-19 resulted from the nature of the employment, as defined in subsection (b), shall not apply. The claimant shall not be required to prove that the COVID-

19 resulted from the nature of the employment, as defined in subsection (b), and had its origin in a special risk of such disease connected with the particular type of employment and resulted from that source.

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

(C) There shall be a conclusive presumption that the COVID-19 was the sole cause of the death.

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

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

(4) The provisions of this subsection shall not be construed so as to limit or exclude any claim for compensation based on an occupational disease.

(5) If any provision of this subsection or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this subsection that can be given effect without the invalid provision or application, and to this end the provisions of this subsection are declared to be severable.";

Also on page 57, in line 14, after the second comma by inserting "44-5a01,";

And by renumbering sections accordingly;

On page 2, in the title, in line 12, after the second semicolon by inserting "workers compensation; relating to occupational diseases, department of corrections employees, COVID-19;"; in line 15, after the second comma by inserting "44-5a01,"

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