AN ACT concerning workers compensation; relating to the prevailing factor standard of causation; amending K.S.A. 2018 Supp. 44-508 and 44-510k and repealing the existing sections.

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

Section 1. K.S.A. 2018 Supp. 44-508 is hereby amended to read as follows: 44-508. As used in the workers compensation act:

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

(b) "Workman" or "employee" or "worker" means any person who has entered into the employment of or works under any contract of service or apprenticeship with an employer. Such terms shall include, but not be limited to: Executive officers of corporations; professional athletes; persons serving on a volunteer basis as duly authorized law enforcement officers, attendants, as defined in subsection (f) of K.S.A. 65-6112(f), and
amendments thereto, drivers of ambulances as defined in subsection (d) of
K.S.A. 65-6112(d), and amendments thereto, firefighters, but only to the
extent and during such periods as they are so serving in such capacities;
persons employed by educational, religious and charitable organizations,
but only to the extent and during the periods that they are paid wages by
such organizations; persons in the service of the state, or any department,
agency or authority of the state, any city, school district, or other political
subdivision or municipality or public corporation and any instrumentality
thereof, under any contract of service, express or implied, and every
official or officer thereof, whether elected or appointed, while performing
official duties; persons in the service of the state as volunteer members of
the Kansas department of civil air patrol, but only to the extent and during
such periods as they are officially engaged in the performance of functions
specified in K.S.A. 48-3302, and amendments thereto; volunteers in any
employment, if the employer has filed an election to extend coverage to
such volunteers; minors, whether such minors are legally or illegally
employed; and persons performing community service work, but only to
the extent and during such periods as they are performing community
service work and if an election has been filed an election to extend
coverage to such persons. Any reference to an employee who has been
injured shall, where the employee is dead, include a reference to the
employee's dependents, to the employee's legal representatives, or, if the
employee is a minor or an incapacitated person, to the employee's guardian
or conservator. Unless there is a valid election in effect which has
been filed as provided in K.S.A. 44-542a, and amendments thereto, such
terms shall not include individual employers, limited liability company
members, partners or self-employed persons.

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

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

(3) "Wholly dependent child or children" means:
(A) A birth child or adopted child of the employee except such a child whose relationship to the employee has been severed by adoption;

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

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

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

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

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

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

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

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

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

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

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

(f) (1) "Personal injury" and "injury" mean any lesion or change in the physical structure of the body, causing damage or harm thereto.
Personal injury or injury may occur only by accident, repetitive trauma or occupational disease as those terms are defined.

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

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

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

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

(iii) the repetitive trauma is a substantial factor in causing both the medical condition and resulting disability or impairment.

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

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

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

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

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

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

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

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

(B) The words "arising out of and in the course of employment," as used in the workers compensation act, shall not be construed to include injuries to the employee occurring while the employee is on the way to assume the duties of employment or after leaving such duties, the proximate cause of which injury is not the employer's negligence. An employee shall not be construed as being on the way to assume the duties of employment or having left such duties at a time when the worker is on the premises owned or under the exclusive control of the employer or on the only available route to or from work which is a route involving a
special risk or hazard connected with the nature of the employment that is
not a risk or hazard to which the general public is exposed and which that
is a route not used by the public except in dealings with the employer. An
employee shall not be construed as being on the way to assume the duties
of employment, if the employee is a provider of emergency services
responding to an emergency.

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

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

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

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

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

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

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

(m) "Community service work" means: (1) Public or community
service performed as a result of a contract of diversion or of assignment to
a community corrections program or conservation camp or suspension of
sentences or as a condition of probation or in lieu of a fine imposed by
court order; or (2) public or community service or other work performed
as a requirement for receipt of any kind of public assistance in accordance
with any program administered by the secretary for children and families.

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

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

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

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

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

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

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

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

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

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

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

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

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

(4) No post-award benefits shall be ordered, modified or terminated
without giving all parties to the award the opportunity to present evidence,
including taking testimony on any disputed matters. A finding with regard
to a disputed issue shall be subject to a full review by the board under
subsection (b) of K.S.A. 44-551, and amendments thereto. Any action of
the board pursuant to post-award orders shall be subject to review under
K.S.A. 44-556, and amendments thereto.
(b) Any application for hearing made pursuant to this section shall receive priority setting by the administrative law judge, only superseded by preliminary hearings pursuant to K.S.A. 44-534a, and amendments thereto. The parties shall meet and confer prior to the hearing pursuant to this section, but a prehearing settlement conference shall not be necessary. The administrative law judge shall have authority to award medical treatment relating back to the entry of the underlying award, but in no event shall such medical treatment relate back more than six months following the filing of such application for post-award medical treatment. Reviews taken under this section shall receive priority settings before the board, only superseded by reviews for preliminary hearings. A decision shall be rendered by the board within 30 days from the time the review hereunder is submitted.

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

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

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