AN ACT concerning workers compensation; permitting compensation for post-traumatic stress disorder suffered by first responders; amending K.S.A. 44-508 and repealing the existing section.

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

New Section 1. (a) For purposes of this section:
(1) "Post-traumatic stress disorder" means the same as such term is defined in the diagnostic and statistical manual of mental disorders, fifth edition (DSM-5, 2013), of the American psychiatric association, diagnosed by a licensed psychiatrist or licensed psychologist.
(2) "First responder" means a firefighter as defined in K.S.A. 40-1709, and amendments thereto, law enforcement officer as defined in K.S.A. 2022 Supp. 74-5602, and amendments thereto, or emergency medical service provider as defined in K.S.A. 2022 Supp. 65-6112, and amendments thereto. "First responder" includes a firefighter, law enforcement officer or emergency medical service provider whether paid or serving as a duly authorized volunteer.

(b) Post-traumatic stress disorder suffered by a first responder is compensable if it arises out of and in the course of employment, whether paid or as a duly authorized volunteer, and regardless of whether there is a corresponding physical injury.

(c) In the case of post-traumatic stress disorder suffered by a first responder while employed or serving as a duly authorized volunteer for the employer against whom benefits are sought, the date of injury shall be the earliest of the date the first responder:
(1) Is taken off work by a licensed psychiatrist or licensed psychologist due to the diagnosed post-traumatic stress disorder;
(2) Is placed on modified or restricted duty by a licensed psychiatrist or licensed psychologist due to the diagnosed post-traumatic stress disorder;
(3) Is advised by a licensed psychiatrist or licensed psychologist that the diagnosed post-traumatic stress disorder is work-related; or
(4) Last worked or volunteered, unless, prior to the last day worked or volunteered, the first responder sought the attention of a physician, or a licensed psychologist, licensed psychiatrist or other mental healthcare professional licensed to practice psychology or mental health counseling,
for a condition that was subsequently diagnosed as post-traumatic stress
disorder by a licensed psychiatrist or licensed psychologist within three
months of such last day worked or volunteered and in such case, the date
of diagnosis shall be the date of injury.

(d) Notwithstanding the provisions of K.S.A. 44-520(a)(1), and
amendments thereto, proceedings for compensation under the workers
compensation act for post-traumatic stress disorder suffered by a first
responder shall be maintainable if notice is given to the employer not later
than 20 calendar days after the date of injury as provided by subsection
(c).

(e) The provisions of K.S.A. 44-501(b)(1)(A), and amendments
thereto, if otherwise found to be applicable, shall not bar a claim by a first
responder under this section where the first responder's use of alcohol or
drugs is attributable to the condition diagnosed as post-traumatic stress
disorder and the first responder enters into alcohol or substance abuse
treatment or counseling ordered by the licensed psychiatrist or licensed
psychologist who diagnosed the post-traumatic stress disorder.

(f) This section shall be a part of and supplemental to the workers
compensation act.

Sec. 2. K.S.A. 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 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 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, emergency medical service providers, as defined in K.S.A. 65-6112, 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 that 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 stepbrothers 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 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 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. In the case of a first responder, as defined in section 1, and amendments thereto, "personal injury" and "injury" includes post-traumatic stress disorder as defined by section 1, and amendments thereto. Except as provided by section 1, and amendments 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 to 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 the prevailing factor in causing the repetitive trauma; and

(iii) the repetitive trauma is the prevailing 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 the prevailing 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 that occurred as a result of the natural aging process or by the normal activities of day-to-day living;

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

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

(iv) accident or injury that 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 that 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 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" 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.

(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) "Healthcare 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 sentence 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 healthcare and health services provided to a patient, based on accepted standards of the healthcare profession involved. Such evaluation is accomplished by means of a system that identifies the utilization of healthcare services above the usual range of utilization for such services, that is based on accepted standards of the healthcare profession involved and 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 healthcare and health services provided a patient that is based on accepted standards of the healthcare profession involved and that is conducted in conjunction with utilization review.

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

(q) "Group-funded self-insurance plan" includes each group-funded workers compensation pool 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 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 healthcare providers for the same or similar services.

(t) "Customary charge" means the usual rates or range of fees charged
by healthcare 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 other healthcare 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. 3. K.S.A. 44-508 is hereby repealed.

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