

## HOUSE BILL No. 2354

By Committee on Commerce, Labor and Economic Development

2-15

---

1 AN ACT concerning labor and employment; relating to high school  
2 apprenticeships and on-the-job training programs; liability for students  
3 and employers; amending K.S.A. 72-18,101 and 72-18,102 and K.S.A.  
4 2018 Supp. 44-508 and repealing the existing sections.

5  
6 *Be it enacted by the Legislature of the State of Kansas:*

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

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

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

1 officers, attendants, as defined in ~~subsection (f)~~ of K.S.A. 65-6112(f), and  
2 amendments thereto, drivers of ambulances as defined in ~~subsection (d)~~ of  
3 K.S.A. 65-6112(d), and amendments thereto, firefighters, but only to the  
4 extent and during such periods as they are so serving in such capacities;  
5 persons employed by educational, religious and charitable organizations,  
6 but only to the extent and during the periods that they are paid wages by  
7 such organizations; persons in the service of the state, or any department,  
8 agency or authority of the state, any city, school district, or other political  
9 subdivision or municipality or public corporation and any instrumentality  
10 thereof, under any contract of service, express or implied, and every  
11 official or officer thereof, whether elected or appointed, while performing  
12 official duties; persons in the service of the state as volunteer members of  
13 the Kansas department of civil air patrol, but only to the extent and during  
14 such periods as they are officially engaged in the performance of functions  
15 specified in K.S.A. 48-3302, and amendments thereto; volunteers in any  
16 employment, *except as otherwise provided herein for certain high school*  
17 *students*, if the employer has filed an election to extend coverage to such  
18 volunteers; minors, *except as otherwise provided herein for certain high*  
19 *school students*, whether such minors are legally or illegally employed;  
20 and persons performing community service work, but only to the extent  
21 and during such periods as they are performing community service work  
22 and if an election has been filed an election to extend coverage to such  
23 persons. Any reference to an employee who has been injured shall, where  
24 the employee is dead, include a reference to the employee's dependents, to  
25 the employee's legal representatives, or, if the employee is a minor or an  
26 incapacitated person, to the employee's guardian or conservator. Unless  
27 there is a valid election in effect which has been filed as provided in  
28 K.S.A. 44-542a, and amendments thereto, such terms shall not include  
29 individual employers, limited liability company members, partners or self-  
30 employed persons. *High school students engaged in a school sponsored*  
31 *apprenticeship, work-based learning program, work-study program,*  
32 *technical, vocational or similar program sponsored by a school district*  
33 *and performing training or services without pay for an employer pursuant*  
34 *to that program, shall be considered a "workman," "employee" or*  
35 *"worker" of the school district for purposes of the workers compensation*  
36 *act and shall be covered under the school district's workers compensation*  
37 *insurance plan.*

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

41 (2) "Members of a family" means only surviving legal spouse and  
42 children; or if no surviving legal spouse or children, then parents or  
43 grandparents; or if no parents or grandparents, then grandchildren; or if no

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

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

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

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

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

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

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

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

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

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

42 (2) the date the employee, while employed for the employer against  
43 whom benefits are sought, is placed on modified or restricted duty by a

1 physician due to the diagnosed repetitive trauma;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

42 (B) The words "arising out of and in the course of employment" as  
43 used in the workers compensation act shall not be construed to include

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

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

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

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

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

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

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

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

1 K.S.A. 74-7036, and amendments thereto, to practice one or more of such  
2 technical professions in Kansas.

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

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

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

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

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

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

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

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

42 (u) "Functional impairment" means the extent, expressed as a  
43 percentage, of the loss of a portion of the total physiological capabilities of

1 the human body as established by competent medical evidence and based  
2 on the fourth edition of the American medical association guides to the  
3 evaluation of impairment, if the impairment is contained therein.

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

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

13 Sec. 2. K.S.A. 72-18,101 is hereby amended to read as follows: 72-  
14 18,101. The board of education of any school district may purchase  
15 insurance contracts to insure against loss resulting from sickness or bodily  
16 injury or death by accident, on the part of students who are injured: On  
17 school premises, ~~or~~; during school sponsored activities; *or during travel to*  
18 *and from or participation in a work-based learning program involving*  
19 *training or work activities conducted at the premises of or under the*  
20 *direction of an employer participating in the program. For purposes of*  
21 *this section, "work-based learning program" has the meaning as provided*  
22 *in section 4, and amendments thereto.*

23 Sec. 3. K.S.A. 72-18,102 is hereby amended to read as follows: 72-  
24 18,102. The board of education of any school district may purchase  
25 insurance contracts for the benefit of students, to insure against loss  
26 resulting from loss, theft of, or damage to, the personal property of  
27 students: While on school premises, ~~or~~; during school sponsored  
28 activities; *or during participation in a work-based learning program*  
29 *involving training or work activities conducted at the premises of or under*  
30 *the direction of an employer participating in the program. For purposes of*  
31 *this section, "work-based learning program" has the meaning as provided*  
32 *in section 4, and amendments thereto.*

33 New Sec. 4. (a) An employer who accepts a secondary student in a  
34 work-based learning program shall not be subject to civil liability for any  
35 claim arising from the student's negligent act or omission.

36 (b) An employer who accepts a secondary student in a work-based  
37 learning program shall not be subject to civil liability for any claim arising  
38 from the employer's negligent act or omission.

39 (c) Nothing in this section shall provide immunity for gross  
40 negligence or willful misconduct.

41 (d) As used in this section, "work-based learning program" means a  
42 learning program in a secondary curriculum that:

43 (1) Includes, but is not limited to, work study, on-the-job training, job

1 shadowing, internships, clinicals, practicums, apprenticeships, co-ops and  
2 industry-led service-learning projects;

3 (2) is incorporated into coursework or related to a specific field of  
4 study;

5 (3) integrates knowledge and theory learned in the classroom with the  
6 practical application and development of technical skills and proficiencies  
7 in a professional work setting; and

8 (4) may or may not include wages, salary or other compensation to  
9 the secondary student.

10 Sec. 5. K.S.A. 72-18,101 and 72-18,102 and K.S.A. 2018 Supp. 44-  
11 508 are hereby repealed.

12 Sec. 6. This act shall take effect and be in force from and after its  
13 publication in the statute book.