

## HOUSE BILL No. 2782

By Committee on Judiciary

2-10

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AN ACT concerning workers compensation; relating to duties of employers; amending K.S.A. 2003 Supp. 44-532 and repealing the existing section.

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

Section 1. K.S.A. 2003 Supp. 44-532 is hereby amended to read as follows: 44-532. (a) Where the payment of compensation of the employee or the employee's dependents is insured by a policy or policies, at the expense of the employer, or the employer is a member of a qualified group-funded workers compensation pool, the insurer or the qualified group-funded workers compensation pool shall be subrogated to the rights and duties under the workers compensation act of the employer so far as appropriate, including the immunities provided by K.S.A. 44-501, and amendments thereto.

(b) Every employer shall secure the payment of compensation to the employer's employees by insuring in one of the following ways: (1) By insuring and keeping insured the payment of such compensation with an insurance carrier authorized to transact the business of workers compensation insurance in the state of Kansas; (2) by showing to the director that the employer carries such employer's own risk and is what is known as a self-insurer and by furnishing proof to the director of the employer's financial ability to pay such compensation for the employer's self; (3) by maintaining a membership in a qualified group-funded workers compensation pool. The cost of carrying such insurance or risk shall be paid by the employer and not the employee.

(c) The knowing and intentional failure of an employer to secure the payment of workers compensation to the employer's employees as required in subsection (b) ~~of this section is a class A misdemeanor.~~ *is:*

(1) *A class A nonperson misdemeanor, if the amount the employer failed to pay is \$500 or less;*

(2) *a severity level 9, nonperson felony, if such amount is more than \$500 but less than \$25,000;*

(3) *a severity level 7, nonperson felony, if such amount is more than \$25,000 but less than \$50,000;*

(4) *a severity level 6, nonperson felony, if such amount is more than*

1 \$50,000 but less than \$100,000;

2 (5) a severity level 5, nonperson felony, if such amount is more than  
3 \$100,000.

4 (d) In addition, whenever the director has reason to believe that any  
5 employer has engaged or is engaging in the knowing and intentional fail-  
6 ure to secure the payment of workers compensation to the employer's  
7 employees as required in subsection (b) ~~of this section~~, the director shall  
8 issue and serve upon such employer a statement of the charges with  
9 respect thereto and shall conduct a hearing in accordance with the Kansas  
10 administrative procedure act, wherein the employer may be liable to the  
11 state for a civil penalty in an amount equal to twice the annual premium  
12 the employer would have paid had such employer been insured or  
13 \$25,000, whichever amount is greater.

14 (e) The director shall not assess such a fine against a self-employed  
15 subcontractor for failure of the subcontractor to secure compensation for  
16 the subcontractor personally, however, the director shall enforce the pro-  
17 visions of this section for failure of the subcontractor to secure compen-  
18 sation for any other employee of the subcontractor as otherwise provided  
19 by law.

20 (f) Any civil penalty imposed or final action taken under this section  
21 shall be subject to review in accordance with the act for judicial review  
22 of agency actions in the district court of Shawnee county.

23 (g) All moneys received under this section for costs assessed or mon-  
24 etary penalties imposed shall be remitted to the state treasurer in ac-  
25 cordance with the provisions of K.S.A. 75-4215, and amendments thereto.  
26 Upon receipt of each such remittance, the state treasurer shall deposit  
27 the entire amount in the state treasury to the credit of the workers com-  
28 pensation fund.

29 (h) (1) Every insurance carrier writing workers compensation insur-  
30 ance for any employment covered under the workers compensation act  
31 shall file, with the director or the director's designee, written notice of  
32 the issuance, nonrenewal or cancellation of a policy or contract of insur-  
33 ance, or any endorsement, providing workers compensation coverage,  
34 within 10 days after such issuance, nonrenewal or cancellation. Every such  
35 insurance carrier shall file, with the director, written notice of all such  
36 policies, contracts and endorsements in force on the effective date of this  
37 act.

38 (2) Every employer covered by the workers compensation act who is  
39 a qualified self-insurer shall give written notice to the director or the  
40 director's designee, if such employer changes from a self-insurer status  
41 to insuring through an insurance carrier or by maintaining a membership  
42 in a qualified group-funded workers compensation pool, such notice to  
43 be given within 10 days after the effective date of such change. Every

1 self-insurer shall file with the director annually a report verifying the  
2 employer's continuing ability to pay compensation to the employer's  
3 employees.

4 (3) Every employer covered by the workers compensation act who is  
5 a member of a qualified group-funded workers compensation pool shall  
6 give written notice to the director or the director's designee, if such em-  
7 ployer changes from a group-funded workers compensation pool to in-  
8 suring through an insurance carrier or becoming a self-insurer, such no-  
9 tice to be given within 10 days after the effective date of such change.

10 (4) The mailing of any written notice or report required by this sub-  
11 section (d) in a stamped envelope within the prescribed time shall comply  
12 with the requirements of this subsection.

13 (5) The director shall provide by regulation for the forms of written  
14 notices and reports required by this subsection (d).

15 (i) As used in this section, "qualified group-funded workers compen-  
16 sation pool" means any qualified group-funded workers compensation  
17 pool under K.S.A. 44-581 through 44-591, and amendments thereto, or  
18 any group-funded pool under the Kansas municipal group-funded pool  
19 act which includes workers compensation and employers' liability under  
20 the workers compensation act.

21 (j) A private firm shall not be eligible to apply to become a self-insurer  
22 unless it has been in continuous operation for at least five years or is  
23 purchasing an existing self-insured Kansas firm, plant or facility and the  
24 operation of the purchased firm, plant or facility: (1) Has been in contin-  
25 uous operation in Kansas for at least 10 years; (2) has generated an after-  
26 tax profit of at least \$1,000,000 annually for the preceding three consec-  
27 utive years; and (3) has a ratio of debt to equity of not greater than 3.5  
28 to 1. As used in this subsection, "debt" means the sum of long-term  
29 borrowing maturing in excess of one year plus the current portion of long-  
30 term borrowing plus short-term financial institution borrowing plus com-  
31 mercial paper borrowing, and "equity" means the sum of the book value  
32 of stock plus paid-in capital plus retained earnings. The method for cal-  
33 culating the amount of security required of self-insureds shall be reviewed  
34 by an actuary every five years, beginning in fiscal year 1997. The costs for  
35 these actuarial studies shall be paid from the workers compensation fee  
36 fund.

37 (k) A corporation or other entity whose current identity is attributable  
38 to a merger or other transformation whereby the whole or a substantial  
39 part of a previous entity's assets and income have been transferred to it,  
40 and its liabilities have not increased beyond the financial review require-  
41 ments of the director, which qualified under its previous identity as a self-  
42 insurer under other provisions of this statute, and amendments thereto,  
43 may apply for renewal as a self-insurer under its new name. The director

1 may grant the application for renewal if satisfied that the new entity meets  
2 all necessary financial criteria for renewal that would have been applied  
3 to the previous self-insured entity. An application under these provisions  
4 shall be limited to an entity seeking renewal based upon the prior self-  
5 insured status of another entity or entities.

6 Sec. 2. K.S.A. 2003 Supp. 44-532 is hereby repealed.

7 Sec. 3. This act shall take effect and be in force from and after its  
8 publication in the statute book.

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