

HOUSE BILL No. 2558

By Committee on Commerce and Economic Development

1-26

Proposed Amendment for HB 2558
Addition of provisions regarding
appeal to courts of appeal
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1 AN ACT concerning workers compensation; pertaining to the
2 administration of the state workers compensation self-insurance fund;
3 pertaining to the state workplace health and safety program; pertaining
4 to certain time limitation on filing; pertaining to duties of the secretary
5 of labor; amending K.S.A. 44-512, 44-557, 44-578 and 74-712 and
6 K.S.A. 2011 Supp. 2-224a, 44-523, 44-575 and 44-577 and repealing
7 the existing sections.
8

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

10 Section 1. K.S.A. 2011 Supp. 2-224a is hereby amended to read as
11 follows: 2-224a. (a) Notwithstanding the provisions of K.S.A. 44-576,
12 and amendments thereto, the state fair board is hereby authorized to
13 purchase workers compensation insurance from an admitted carrier. Any
14 contract for the purchase of workers compensation insurance entered into
15 by the state fair board shall be purchased in the manner prescribed for the
16 purchase of supplies, materials, equipment and contractual services as
17 provided in K.S.A. 75-3738 through 75-3744, and amendments thereto,
18 and any such contract having a premium or rate in excess of \$500 shall be
19 purchased on the basis of sealed bids. Such contract shall not be subject to
20 the provisions of K.S.A. 75-4101 through 75-4114 and K.S.A. 2011 Supp.
21 75-4125, and amendments thereto.

22 (b) If the state fair board enters into a contract for the purchase of
23 workers compensation insurance as described in subsection (a), from and
24 after the end of the payroll period in which such workers compensation
25 policy takes effect, the state fair board shall not be subject to the self-
26 insurance assessment prescribed by K.S.A. 44-576, and amendments
27 thereto, and the director of accounts and reports shall cease to transfer any
28 amounts for such self-assessment for the state fair board pursuant to such
29 statute, except that any moneys paid relating to existing claims with the
30 state workers compensation self-insurance fund made by the state fair
31 board shall be assessed to the state fair board until all such claims have
32 been closed and settled.

33 (c) Notwithstanding the provisions of K.S.A. 44-575, and
34 amendments thereto, if the state fair board enters into a contract for the
35 purchase of workers compensation insurance as described in subsection
36 (a), the state workers compensation self-insurance fund shall not be liable

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1 party seeking a change of administrative law judge may file in the district
 2 court of the county in which the accident or injury occurred the affidavit
 3 provided in subsection (e)(2). If an affidavit is to be filed in the district
 4 court, it shall be filed within 10 days request that the director reassign the
 5 case.

6 (2) If a party or a party's attorney files an affidavit alleging any of the
 7 grounds specified in subsection (e)(2), the chief judge shall at once
 8 determine or refer the affidavit to another district court judge for prompt
 9 determination of the legal sufficiency of the affidavit. If the affidavit is
 10 filed in a district court in which there is no other judge who is qualified to
 11 hear the matter, the chief judge shall at once notify the departmental justice
 12 for the district and request the appointment of another district judge to
 13 determine the legal sufficiency of the affidavit. If the affidavit is found
 14 to be legally sufficient, the district court judge shall order the director to
 15 assign the case to another administrative law judge or to an assistant
 16 director. The party or a party's attorney shall file with the director an
 17 affidavit alleging one or more of the grounds specified in subsection (e)
 18 (3). If the director finds legally sufficient grounds, the director shall assign
 19 the case to another administrative law judge or to an assistant director.

20 (3) Grounds which may be alleged as provided in subsection (e)(2)
 21 for change of administrative law judge are that:

22 (A) The administrative law judge has been engaged as counsel in the
 23 case prior to the appointment as administrative law judge.

24 (B) The administrative law judge is otherwise interested in the case.

25 (C) The administrative law judge is related to either party in the case.

26 (D) The administrative law judge is a material witness in the case.

27 (E) The party or party's attorney filing the affidavit has caused to
 28 believe and does believe that on account of the personal bias, prejudice or
 29 interest of the administrative law judge such party cannot obtain a fair and
 30 impartial hearing. Such affidavit shall state the facts and the reasons for
 31 the belief that bias, prejudice or an interest exists.

32 (4) In any affidavit filed pursuant to subsection (e)(2), the recital of
 33 previous rulings or decisions by the administrative law judge on legal
 34 issues or concerning prior motions for change of administrative law judge
 35 filed by counsel or such counsel's law firm, pursuant to this subsection,
 36 shall not be deemed legally sufficient for any believe-~~belief~~ belief that
 37 bias or prejudice exists.

38 (F) (1) In any claim that has not proceeded to a regular hearing, a
 39 settlement hearing, or an agreed award under the workers compensation
 40 act within three years from the date of filing an application for hearing
 41 pursuant to K.S.A. 44-534, and amendments thereto, the employer shall be
 42 permitted to file with the division an application for dismissal based on
 43 lack of prosecution. The matter shall be set for hearing with notice to the

(5) A determination by the director as to the legal sufficiency of the affidavit for recusal submitted above shall be appealable to the courts of appeal under the provisions of K.S.A. 44-556, and amendments thereto.

1 claimant's attorney, if the claimant is represented, or to the claimant's last
2 known address. The administrative law judge may grant an extension for
3 good cause shown, which shall be conclusively presumed in the event that
4 the claimant has not reached maximum medical improvement, provided
5 such motion to extend is filed prior to the three year limitation provided
6 for herein. If the claimant cannot establish good cause, the claim shall be
7 dismissed with prejudice by the administrative law judge for lack of
8 prosecution. Such dismissal shall be considered a final disposition at a full
9 hearing on the claim for purposes of employer reimbursement from the
10 fund pursuant to subsection (b) of K.S.A. 44-534a, and amendments
11 thereto.

12 (2) In any claim which has not proceeded to regular hearing within
13 one year from the date of a preliminary award denying compensability of
14 the claim, the employer shall be permitted to file with the division an
15 application for dismissal based on lack of prosecution. The matter shall be
16 set for hearing with notice to the claimant's attorney, if the claimant is
17 represented, or to the claimant's last known address. Unless the claimant
18 can prove a good faith reason for delay, the claim shall be dismissed with
19 prejudice by the administrative law judge. Such dismissal shall be
20 considered a final disposition at a full hearing on the claim for purposes of
21 employer reimbursement from the fund pursuant to subsection (b) of
22 K.S.A. 44-534a, and amendments thereto.

23 (3) This section shall not affect any future benefits which have been
24 left open upon proper application by an award or settlement.

25 Sec. 4. K.S.A. 44-557 is hereby amended to read as follows: 44-557.

26 (a) It is hereby made the duty of every employer to make or cause to be
27 made a report to the director of every accident, or claimed or alleged
28 accident, to any employee which occurs in the course of the employee's
29 employment and of which the employer or the employer's supervisor has
30 knowledge, which report shall be made upon a form to be prepared by the
31 director, within 28 days, after the receipt of such knowledge, if the
32 personal injuries which are sustained by such accidents, are sufficient
33 wholly or partially to incapacitate the person injured from labor or service
34 for more than the remainder of the day, shift or turn on which such injuries
35 were sustained.

36 (b) When such accident has been reported and subsequently such
37 person has died, a supplemental report shall be filed with the director
38 within 28 days after receipt of knowledge of such death, stating such fact
39 and any other facts in connection with such death or as to the dependents
40 of such deceased employee which the director may require. Such report or
41 reports shall not be used nor considered as evidence before the director,
42 any administrative law judge, the board or in any court in this state.

43 ~~(c) No limitation of time in the workers compensation act shall begin~~

1 to run unless a report of the accident as provided in this section has been
2 filed at the office of the director if the injured employee has given notice
3 of such accident as provided by K.S.A. 44-520 and amendments thereto,
4 except that any proceeding for compensation for any such injury or death
5 where report of the accident has not been filed, must be commenced by
6 serving upon the employer a written claim pursuant to K.S.A. 44-520a and
7 amendments thereto within one year from the date of the accident,
8 suspension of payment of disability compensation, the date of the last
9 medical treatment authorized by the employer, or the death of such
10 employee referred to in K.S.A. 44-520a and amendments thereto.

11 (d) [The repeated failure of any employer to file or cause to be filed
12 any report required by this section shall be subject to a civil penalty for
13 each violation of not to exceed \$250.]

14 (e) [Any civil penalty imposed by this section shall be recovered, by
15 the assistant attorney general upon information received from the director,
16 by issuing and serving upon such employer a summary order or statement
17 of the charges with respect thereto and a hearing shall be conducted
18 thereon in accordance with the provisions of the Kansas administrative
19 procedure act, except that, at the discretion of the director, such civil
20 penalties may be assessed as costs in a workers compensation proceeding
21 by an administrative law judge upon a showing by the assistant attorney
22 general that a required report was not filed which pertains to a claim
23 pending before the administrative law judge.]

24 Sec. 5. K.S.A. 2011 Supp. 44-575 is hereby amended to read as
25 follows: 44-575. (a) As used in K.S.A. 44-575 through 44-580, and
26 amendments thereto, "state agency" means the state, or any department or
27 agency of the state, but not including the Kansas turnpike authority, the
28 university of Kansas hospital authority, any political subdivision of the
29 state or the district court with regard to district court officers or employees
30 whose total salary is payable by counties.

31 (b) For the purposes of providing for the payment of compensation
32 for claims arising on and after July 1, 1974, and all other amounts required
33 to be paid by any state agency as a self-insured employer under the
34 workers compensation act and any amendments or additions thereto, there
35 is hereby established the state workers compensation self-insurance fund
36 in the state treasury. The name of the state workmen's compensation self-
37 insurance fund is hereby changed to the state workers compensation self-
38 insurance fund. Whenever the state workmen's compensation self-
39 insurance fund is referred to or designated by any statute, contract or other
40 document, such reference or designation shall be deemed to apply to the
41 state workers compensation self-insurance fund.

42 (c) The state workers compensation self-insurance fund shall be liable
43 to pay: (1) All compensation for claims arising on and after July 1, 1974,