

**HOUSE BILL No. 2211**

By Representative Rhiley

2-3

1 AN ACT concerning insurance; relating to the Kansas automobile injury  
2 reparations act; pertaining to the owner's failure to maintain financial  
3 security; requiring law enforcement to impound the vehicles of certain  
4 uninsured owners; amending K.S.A. 2020 Supp. 40-3104 and repealing  
5 the existing section.  
6

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

8 Section 1. K.S.A. 2020 Supp. 40-3104 is hereby amended to read as  
9 follows: 40-3104. (a) Every owner shall provide motor vehicle liability  
10 insurance coverage in accordance with the provisions of this act for every  
11 motor vehicle owned by such person, unless such motor vehicle:

12 (1) Is included under an approved self-insurance plan as provided in  
13 subsection (f);

14 (2) is used as a driver training motor vehicle, as defined in K.S.A. 72-  
15 4005, and amendments thereto, in an approved driver training course by a  
16 school district or an accredited nonpublic school under an agreement with  
17 a motor vehicle dealer, and such motor vehicle liability insurance coverage  
18 is provided by the school district or accredited nonpublic school;

19 (3) is included under a qualified plan of self-insurance approved by  
20 an agency of the state in which such motor vehicle is registered and the  
21 form prescribed in ~~subsection (b)~~ of K.S.A. 40-3106(b), and amendments  
22 thereto, has been filed; or

23 (4) is expressly exempted from the provisions of this act.

24 (b) An owner of an uninsured motor vehicle shall not permit the  
25 operation thereof upon a highway or upon property open to use by the  
26 public, unless such motor vehicle is expressly exempted from the  
27 provisions of this act.

28 (c) No person shall knowingly drive an uninsured motor vehicle upon  
29 a highway or upon property open to use by the public, unless such motor  
30 vehicle is expressly exempted from the provisions of this act.

31 (d) (1) Any person operating a motor vehicle upon a highway or upon  
32 property open to use by the public shall display, upon demand, evidence of  
33 financial security to a law enforcement officer. Such evidence of financial  
34 security ~~which~~ *that* meets the requirements of subsection (e) may be  
35 displayed on a cellular phone or any other type of portable electronic  
36 device. The law enforcement officer to whom such evidence of financial

1 security is displayed shall view only such evidence of financial  
2 responsibility. Such law enforcement officer shall be prohibited from  
3 viewing any other content or information stored on such cellular phone or  
4 other type of portable electronic device. The law enforcement officer shall  
5 issue a citation to any person who fails to display evidence of financial  
6 security upon such demand. The law enforcement officer shall transmit a  
7 copy of the insurance verification form prescribed by the secretary of  
8 revenue with the copy of the citation transmitted to the court.

9 (2) No citation shall be issued to any person for failure to provide  
10 proof of financial security when evidence of financial security meeting the  
11 standards of subsection (e) is displayed upon demand of a law enforcement  
12 officer. Whenever the authenticity of such evidence is questionable, the  
13 law enforcement officer may initiate the preparation of the insurance  
14 verification form prescribed by the secretary of revenue by recording  
15 information from the evidence of financial security displayed. The officer  
16 shall immediately forward the form to the department of revenue, and the  
17 department shall proceed with verification in the manner prescribed in the  
18 following paragraph. Upon return of a form indicating that insurance was  
19 not in force on the date indicated on the form, the department shall  
20 immediately forward a copy of the form to the law enforcement officer  
21 initiating preparation of the form.

22 (3) *A law enforcement officer shall impound the vehicle of any person*  
23 *who is unable to provide proof of financial security meeting the*  
24 *requirements of subsection (e) and who has previously been issued a*  
25 *citation for failure to provide proof of financial security upon demand.*  
26 *Such vehicle shall remain impounded until the owner provides evidence of*  
27 *financial security meeting the requirements of subsection (e). The owner*  
28 *shall not be charged a fee for up to the first 15 days of such vehicle's*  
29 *impoundment or for the cost of towing, storage or any other fees relating*  
30 *to the first 15 days of the impoundment of such vehicle.*

31 (e) Unless the insurance company subsequently submits an insurance  
32 verification form indicating that insurance was not in force, no person  
33 charged with violating subsection (b), (c) or (d) shall be convicted if such  
34 person produces in court, within 10 days of the date of arrest or of issuance  
35 of the citation, evidence of financial security for the motor vehicle  
36 operated, which was valid at the time of arrest or of issuance of the  
37 citation. Such evidence of financial security may be produced by  
38 displaying such information on a cellular phone or any other type of  
39 portable electronic device. Any person to whom such evidence of financial  
40 security is displayed on a cellular phone or any other type of portable  
41 electronic device shall be prohibited from viewing any other content or  
42 information stored on such cellular phone or other type of portable  
43 electronic device. For the purpose of this subsection, evidence of financial

1 security shall be provided by a policy of motor vehicle liability insurance,  
2 an identification card or certificate of insurance issued to the policyholder  
3 by the insurer which provides the name of the insurer, the policy number,  
4 make and year of the vehicle and the effective and expiration dates of the  
5 policy, or a certificate of self-insurance signed by the commissioner of  
6 insurance. Upon the production in court of evidence of financial security,  
7 the court shall record the information displayed thereon on the insurance  
8 verification form prescribed by the secretary of revenue, immediately  
9 forward such form to the department of revenue, and stay any further  
10 proceedings on the matter pending a request from the prosecuting attorney  
11 that the matter be set for trial. Upon receipt of such form the department  
12 shall mail the form to the named insurance company for verification that  
13 insurance was in force on the date indicated on the form. It shall be the  
14 duty of insurance companies to notify the department within 30 calendar  
15 days of the receipt of such forms of any insurance that was not in force on  
16 the date specified. Upon return of any form to the department indicating  
17 that insurance was not in force on such date, the department shall  
18 immediately forward a copy of such form to the office of the prosecuting  
19 attorney or the city clerk of the municipality in which such prosecution is  
20 pending when the prosecuting attorney is not ascertainable. Receipt of any  
21 completed form indicating that insurance was not in effect on the date  
22 specified shall be prima facie evidence of failure to provide proof of  
23 financial security and violation of this section. A request that the matter be  
24 set for trial shall be made immediately following the receipt by the  
25 prosecuting attorney of a copy of the form from the department of revenue  
26 indicating that insurance was not in force. Any charge of violating  
27 subsection (b), (c) or (d) shall be dismissed if no request for a trial setting  
28 has been made within 60 days of the date evidence of financial security  
29 was produced in court.

30 (f) Any person in whose name more than 25 motor vehicles are  
31 registered in Kansas may qualify as a self-insurer by obtaining a certificate  
32 of self-insurance from the commissioner of insurance. The certificate of  
33 self-insurance issued by the commissioner shall cover such owned vehicles  
34 and those vehicles, registered in Kansas, leased to such person if the lease  
35 agreement requires that motor vehicle liability insurance on the vehicles be  
36 provided by the lessee. Upon application of any such person, the  
37 commissioner of insurance may issue a certificate of self-insurance, if the  
38 commissioner is satisfied that such person is possessed and will continue  
39 to be possessed of ability to pay any liability imposed by law against such  
40 person arising out of the ownership, operation, maintenance or use of any  
41 motor vehicle described in this subsection. A self-insurer shall provide  
42 liability coverage subject to the provisions of ~~subsection (e)~~ of K.S.A. 40-  
43 3107(e), and amendments thereto, arising out of the ownership, operation,

1 maintenance or use of a self-insured motor vehicle in those instances  
2 where the lessee or the rental driver, if not the lessee, does not have a  
3 motor vehicle liability insurance policy or insurance coverage pursuant to  
4 a motor vehicle liability insurance policy or certificate of insurance or such  
5 insurance policy for such leased or rented vehicle. Such liability coverage  
6 shall be provided to any person operating a self-insured motor vehicle with  
7 the expressed or implied consent of the self-insurer.

8 Upon notice and a hearing in accordance with the provisions of the  
9 Kansas administrative procedure act, the commissioner of insurance may  
10 cancel a certificate of self-insurance upon reasonable grounds. Failure to  
11 provide liability coverage or personal injury protection benefits required  
12 by K.S.A. 40-3107 and 40-3109, and amendments thereto, or pay any  
13 liability imposed by law arising out of the ownership, operation,  
14 maintenance or use of a motor vehicle registered in such self-insurer's  
15 name, or to otherwise comply with the requirements of this subsection  
16 shall constitute reasonable grounds for the cancellation of a certificate of  
17 self-insurance. Reasonable grounds shall not exist unless such  
18 objectionable activity occurs with such frequency as to indicate a general  
19 business practice.

20 Self-insureds shall investigate claims in a reasonably prompt manner,  
21 handle such claims in a reasonable manner based on available information  
22 and effectuate prompt, fair and equitable settlement of claims in which  
23 liability has become reasonably clear.

24 As used in this subsection, "liability imposed by law" means the stated  
25 limits of liability as provided under ~~subsection (e)~~ of K.S.A. 40-3107(e),  
26 and amendments thereto.

27 Nothing in this subsection shall preclude a self-insurer from pursuing  
28 all rights of subrogation against another person or persons.

29 (g) (1) Any person violating any provision of this section, *except the*  
30 *provisions of subsection (d)*, shall be guilty of a class B misdemeanor and  
31 shall be subject to a fine of not less than \$300 nor more than \$1,000 or  
32 confinement in the county jail for a term of not more than six months, or  
33 both such fine and confinement.

34 (2) Any person convicted of violating any provision of this section  
35 within three years of any such prior conviction shall be guilty of a class A  
36 misdemeanor and shall be subject to a fine of not less than \$800 nor more  
37 than \$2,500.

38 (h) In addition to any other penalties provided by this act for failure  
39 to have or maintain financial security in effect, the director, upon receipt of  
40 a report required by K.S.A. 8-1607 or 8-1611, and amendments thereto, or  
41 a denial of such insurance by the insurance company listed on the form  
42 prescribed by the secretary of revenue pursuant to subsection (d) ~~of this~~  
43 ~~section~~, shall, upon notice and hearing as provided by K.S.A. 40-3118, and

1 amendments thereto:

2 (1) Suspend:

3 (A) The license of each driver in any manner involved in the  
4 accident;

5 (B) the license of the owner of each motor vehicle involved in such  
6 accident, unless the vehicle was stolen at the time of the accident, proof of  
7 which must be established by the owner of the motor vehicle. Theft by a  
8 member of the vehicle owner's immediate family under the age of 18 years  
9 shall not constitute a stolen vehicle for the purposes of this section;

10 (C) if the driver is a nonresident, the privilege of operating a motor  
11 vehicle within this state; or

12 (D) if such owner is a nonresident, the privilege of such owner to  
13 operate or permit the operation within this state of any motor vehicle  
14 owned by such owner; and

15 (2) revoke the registration of all vehicles owned by the owner of each  
16 motor vehicle involved in such accident *and impound any vehicle for*  
17 *which the owner was unable to provide evidence of financial security*  
18 *meeting the requirements of subsection (e). Any such vehicle shall remain*  
19 *impounded until the owner provides evidence of financial security meeting*  
20 *the requirements of subsection (e). The owner shall not be charged a fee*  
21 *for up to the first 15 days of such vehicle's impoundment, or for the cost of*  
22 *towing, storage or any other fees relating to the first 15 days of the*  
23 *impoundment of such vehicle.*

24 (i) The suspension or revocation requirements in subsection (h) shall  
25 not apply:

26 (1) To the driver or owner if the owner had in effect at the time of the  
27 accident an automobile liability policy as required by K.S.A. 40-3107, and  
28 amendments thereto, with respect to the vehicle involved in the accident;

29 (2) to the driver, if not the owner of the vehicle involved in the  
30 accident, if there was in effect at the time of the accident an automobile  
31 liability policy with respect to such driver's driving of vehicles not owned  
32 by such driver;

33 (3) to any self-insurer as defined by ~~subsection (u) of~~ K.S.A. 40-  
34 3103, and amendments thereto;

35 (4) to the driver or owner of any vehicle involved in the accident  
36 which was exempt from the provisions of this act pursuant to K.S.A. 40-  
37 3105, and amendments thereto;

38 (5) to the owner of a vehicle described in subsection (a)(2).

39 (j) ~~(1) For the purposes of provisions (1) and (2) of subsection~~  
40 ~~subsections (i)(1) and (2) of this section,~~ the director may require  
41 verification by an owner's or driver's insurance company or agent thereof  
42 that there was in effect at the time of the accident an automobile liability  
43 policy as required in this act.

1 (2) Subject to the provisions of subsection (k), any suspension or  
2 revocation effected hereunder shall remain in effect until such person:

3 (A) Has filed satisfactory proof of financial security with the director  
4 as required by ~~subsection (d)~~ of K.S.A. 40-3118(d), and amendments  
5 thereto;

6 (B) has paid the reinstatement fee herein prescribed; and

7 (C) (i) has been released from liability;

8 (ii) is a party to an action to determine liability pursuant to which the  
9 court temporarily stays such suspension pending final disposition of such  
10 action;

11 (iii) has entered into an agreement for the payment of damages; or

12 (iv) has been finally adjudicated not to be liable in respect to such  
13 accident and evidence of any such fact has been filed with the director.

14 (3) The reinstatement fee shall be \$100 except that if the registration  
15 of a motor vehicle of any owner is revoked within one year following a  
16 prior revocation of the registration of a motor vehicle of such owner under  
17 the provisions of this act such fee shall be \$300.

18 (k) (1) Whenever any person whose license has been suspended or  
19 revoked pursuant to this section is involved in an accident and has entered  
20 into an agreement with any driver, or such driver's insurer, who has been  
21 damaged or whose vehicle has been damaged to pay for such damage and  
22 such person defaults on payments under such agreement, the driver or the  
23 driver's insurer, as appropriate, shall notify the director within 60 days of  
24 the date of default.

25 (2) Upon receipt of the notice of default, the director shall  
26 immediately suspend such person's license and registration. If such person  
27 is a nonresident, the director shall immediately suspend such nonresident's  
28 privilege to operate a motor vehicle in this state.

29 (3) Except as provided in paragraph (4), such person's driver's  
30 license, registration and nonresident's operating privilege shall remain so  
31 suspended and shall not be renewed, nor shall any such license or  
32 registration be thereafter issued in the name of such person, including any  
33 such person not previously licensed, unless and until:

34 (A) The director receives notice payments under the agreement  
35 referred to in paragraph (1) have been resumed and that payments under  
36 such agreement are no longer in default;

37 (B) such person has filed satisfactory proof of financial responsibility  
38 with the director as required by ~~subsection (d)~~ of K.S.A. 40-3118(d), and  
39 amendments thereto; and

40 (C) the reinstatement fee required by subsection (j) has been paid.

41 (4) Upon due notice to the director that the conditions of paragraph  
42 (3) have been fulfilled, such person may obtain from the director an order  
43 restoring such person's driver's license, registration and nonresident's

1 operating privilege to operate a motor vehicle in this state conditioned  
2 upon such person's continued compliance with the agreement referred to in  
3 paragraph (1).

4 (5) In the event such person fails to make any further payment under  
5 the agreement referred to in paragraph (1) when such payment is due, the  
6 director, upon receipt of notice of such default, shall immediately suspend  
7 the license, registration or nonresident's operating privilege of such person  
8 until all payments have been made under the agreement referred to in  
9 paragraph (1). No suspension of such person's license, registration or  
10 nonresident's privilege to operate a motor vehicle in this state shall be  
11 reinstated pursuant to paragraph (4).

12 (l) The provisions of this section shall not apply to motor carriers of  
13 property or passengers regulated by the corporation commission of the  
14 state of Kansas.

15 (m) The provisions of subsection (d) shall not apply to vehicle  
16 dealers, as defined in K.S.A. 8-2401, and amendments thereto, for vehicles  
17 being offered for sale by such dealers.

18 Sec. 2. K.S.A. 2020 Supp. 40-3104 is hereby repealed.

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