

44-532. Subrogation of insurer or group-funded pool to rights and duties of employer; methods of securing payment of compensation; failure to secure; penalties; notice to director by insurers; change of status notice by self-insurers and group-funded pool members; eligibility to self-insure; merging employers. (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.

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

(e) The director shall not assess such a fine against a self-employed subcontractor for failure of the subcontractor to secure compensation for the subcontractor personally, however, the director shall enforce the provisions of this section for failure of the subcontractor to secure compensation for any other employee of the subcontractor as otherwise provided by law.

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

(g) All moneys received under this section for costs assessed or monetary penalties imposed shall be remitted to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of the workers compensation fund.

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

(2) Every employer covered by the workers compensation act who is a qualified self-insurer shall give written notice to the director or the director's designee, if such employer changes from a self-insurer status to insuring through an insurance carrier or by maintaining a membership in a qualified group-funded workers compensation pool, such notice to be given within 10 days after the effective date of such change. Every self-insurer shall file with the director annually a report verifying the employer's continuing ability to pay compensation to the employer's employees.

(3) Every employer covered by the workers compensation act who is a member of a qualified group-funded workers compensation pool shall give written notice to the director or the director's designee, if such employer changes from a group-funded workers compensation pool to insuring through an insurance carrier or becoming a self-insurer, such notice to be given within 10 days after the effective date of such change.

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

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

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

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

(k) A corporation or other entity whose current identity is attributable to a merger or other transformation whereby the whole or a substantial part of a previous entity's assets and income have been transferred to it, and its liabilities have not increased beyond the financial review requirements of the director, which qualified under its previous identity as a self-insurer under other provisions of this statute, and amendments thereto, may apply for renewal as a self-insurer under its new name. The director may grant the application for renewal if satisfied that the new entity meets all necessary financial criteria for renewal that would have been applied to the previous self-insured entity. An application under these provisions shall be limited to an entity seeking renewal based upon the prior self-insured status of another entity or entities.

History: L. 1927, ch. 232, § 32; L. 1967, ch. 280, § 8; L. 1974, ch. 203, § 31; L. 1980, ch. 146, § 8; L. 1983, ch. 166, § 14; L. 1984, ch. 181, § 1; L. 1989, ch. 149, § 3; L. 1991, ch. 144, § 8; L. 1996, ch. 79, § 9; L. 1997, ch. 125, § 7; L. 1998, ch. 120, § 5; L. 2001, ch. 5, § 136; July 1.