

## HOUSE BILL No. 2558

By Committee on Commerce and Economic Development

1-26

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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

1 for any compensation claims under the workers compensation act relating  
2 to the state fair board and arising during the term of such contract, or for  
3 any other amounts otherwise required to be paid under the workers  
4 compensation act during the term of such contract.

5 (d) The state fair board shall notify the secretary of ~~administration~~  
6 *health and environment* and the Kansas health policy authority of the  
7 effective date of any workers compensation policy acquired pursuant to  
8 this section.

9 Sec. 2. K.S.A. 44-512 is hereby amended to read as follows: 44-512.  
10 Workers compensation payments shall be made at the same time, place and  
11 in the same manner as the wages of the worker were payable at the time of  
12 the accident, but upon the application of either party the administrative law  
13 judge may modify such requirements in a particular case as the  
14 administrative law judge deems just, except that:

15 (a) Payments from the workers compensation fund established by  
16 K.S.A. 44-566a, and amendments thereto, shall be made in the manner  
17 approved by the commissioner of insurance;

18 (b) payments from the state workers compensation self-insurance  
19 fund established by K.S.A. 44-575, and amendments thereto, shall be  
20 made in a manner approved by the secretary of ~~administration~~ *health and*  
21 *environment*; and

22 (c) whenever temporary total disability compensation is to be paid  
23 under the workers compensation act, payments shall be made only in cash,  
24 by check or in the same manner that the employee is normally  
25 compensated for salary or wages and not by any other means, except that  
26 any such compensation may be paid by warrant of the director of accounts  
27 and reports issued for payment of such compensation from the workers  
28 compensation fund or the state workers compensation self-insurance fund  
29 under the workers compensation act.

30 Sec. 3. K.S.A. 2011 Supp. 44-523 is hereby amended to read as  
31 follows: 44-523. (a) The director, administrative law judge or board shall  
32 not be bound by technical rules of procedure, but shall give the parties  
33 reasonable opportunity to be heard and to present evidence, ~~insure~~ *ensure*  
34 the employee and the employer an expeditious hearing and act reasonably  
35 without partiality.

36 (b) Whenever a party files an application for hearing pursuant to  
37 K.S.A. 44-534, and amendments thereto, the matter shall be assigned to an  
38 administrative law judge for hearing and the administrative law judge shall  
39 set a terminal date to require the claimant to submit all evidence in support  
40 of the claimant's claim no later than 30 days after the first full hearing  
41 before the administrative law judge and to require the respondent to submit  
42 all evidence in support of the respondent's position no later than 30 days  
43 thereafter. An extension of the foregoing time limits shall be granted if all

1 parties agree. An extension of the foregoing time limits may also be  
2 granted:

3 (1) If the employee is being paid temporary or permanent total  
4 disability compensation;

5 (2) for medical examination of the claimant if the party requesting the  
6 extension explains in writing to the administrative law judge facts showing  
7 that the party made a diligent effort but was unable to have a medical  
8 examination conducted prior to the submission of the case by the claimant  
9 but then only if the examination appointment was set and notice of the  
10 appointment sent prior to submission by the claimant; or

11 (3) on application for good cause shown.

12 (c) When all parties have submitted the case to an administrative law  
13 judge for an award, the administrative law judge shall issue an award  
14 within 30 days. The administrative law judge shall not stay a decision due  
15 to the absence of a submission letter. When the award is not entered in 30  
16 days, any party to the action may notify the director that an award is not  
17 entered and the director shall assign the matter to an assistant director or to  
18 a special administrative law judge who shall enter an award forthwith  
19 based on the evidence in the record, or the director, on the director's own  
20 motion, may remove the case from the administrative law judge who has  
21 not entered an award within 30 days following submission by the party  
22 and assign it to an assistant director or to a special administrative law  
23 judge for immediate decision based on the evidence in the record.

24 (d) Not less than 10 days prior to the first full hearing before an  
25 administrative law judge, the administrative law judge shall conduct a  
26 prehearing settlement conference for the purpose of obtaining stipulations  
27 from the parties, determining the issues and exploring the possibility that  
28 the parties may resolve those issues and reach a settlement prior to the first  
29 full hearing.

30 (e) (1) If a party or a party's attorney believes that the administrative  
31 law judge to whom a case is assigned cannot afford that party a fair  
32 hearing in the case, the party or attorney may file a motion for change of  
33 administrative law judge. A party or a party's attorney shall not file more  
34 than one motion for change of administrative law judge in a case. The  
35 administrative law judge shall promptly hear the motion informally upon  
36 reasonable notice to all parties who have appeared in the case.  
37 Notwithstanding the provisions of K.S.A. 44-552, and amendments  
38 thereto, the administrative law judge shall decide, in the administrative law  
39 judge's discretion, whether or not the hearing of such motion shall be taken  
40 down by a certified shorthand reporter. If the administrative law judge  
41 disqualifies the administrative law judge's self, the case shall be assigned  
42 to another administrative law judge by the director. If the administrative  
43 law judge refuses to disqualify the administrative law judge's self, the

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)(3), 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 ~~determining 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 ~~affadavit 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 cause 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

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 any 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 ~~servng 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,

1 and all other amounts required to be paid by any state agency as a self-  
2 insured employer under the workers compensation act and any  
3 amendments or additions thereto; (2) the amount that all state agencies are  
4 liable to pay of the "carrier's share of expense" of the administration of the  
5 office of the director of workers' compensation as provided in K.S.A. 74-  
6 712 through 74-719, and amendments thereto, for each fiscal year; (3) all  
7 compensation for claims remaining from the self-insurance program which  
8 existed prior to July 1, 1974, for institutional employees of the division of  
9 mental health and retardation services of the department of social and  
10 rehabilitation services; (4) the cost of administering the state workers  
11 compensation self-insurance fund including the defense of such fund and  
12 any costs assessed to such fund in any proceeding to which it is a party;  
13 and (5) the cost of establishing and operating the state workplace health  
14 and safety program under subsection (f). For the purposes of K.S.A. 44-  
15 575 through 44-580, and amendments thereto, all state agencies are hereby  
16 deemed to be a single employer whose liabilities specified in this section  
17 are hereby imposed solely upon the state workers compensation self-  
18 insurance fund and such employer is hereby declared to be a fully  
19 authorized and qualified self-insurer under K.S.A. 44-532, and  
20 amendments thereto, but such employer shall not be required to make any  
21 reports thereunder.

22 (d) The secretary of ~~administration~~ *health and environment* shall  
23 administer the state workers compensation self-insurance fund and all  
24 payments from such fund shall be upon warrants of the director of  
25 accounts and reports issued pursuant to vouchers approved by the  
26 secretary of ~~administration~~ *health and environment* or a person or persons  
27 designated by the secretary. The director of accounts and reports may issue  
28 warrants pursuant to vouchers approved by the secretary for payments  
29 from the state workers compensation self-insurance fund notwithstanding  
30 the fact that claims for such payments were not submitted or processed for  
31 payment from money appropriated for the fiscal year in which the state  
32 workers compensation self-insurance fund first became liable to make  
33 such payments.

34 (e) The secretary of ~~administration~~ *health and environment* shall  
35 remit all moneys received by or for the secretary in the capacity as  
36 administrator of the state workers compensation self-insurance fund, to the  
37 state treasurer in accordance with the provisions of K.S.A. 75-4215, and  
38 amendments thereto. Upon receipt of each such remittance, the state  
39 treasurer shall deposit the entire amount in the state treasury to the credit  
40 of the state workers compensation self-insurance fund.

41 (f) There is hereby established the state workplace health and safety  
42 program within the state workers compensation self-insurance program of  
43 the department of ~~administration~~ *health and environment*. The secretary of

1 ~~administration~~ *health and environment* shall implement and *the division of*  
2 *industrial health and safety of the Kansas department of labor* shall  
3 administer the state workplace health and safety program for state  
4 agencies. The state workplace health and safety program shall include, but  
5 not be limited to:

6 (1) Workplace health and safety hazard surveys in all state agencies,  
7 including onsite interviews with employees;

8 (2) workplace health and safety hazard prevention services, including  
9 inspection and consultation services;

10 (3) procedures for identifying and controlling workplace hazards;

11 (4) development and dissemination of health and safety informational  
12 materials, plans, rules and work procedures; and

13 (5) training for supervisors and employees in healthful and safe work  
14 practices.

15 Sec. 6. K.S.A. 2011 Supp. 44-577 is hereby amended to read as  
16 follows: 44-577. (a) All claims for compensation under the workers  
17 compensation act against any state agency for claims arising on and after  
18 July 1, 1974, and claims for compensation remaining from the self-  
19 insurance program which existed prior to July 1, 1974, for institutional  
20 employees of the division of mental health and retardation services of the  
21 department of social and rehabilitation services shall be made against the  
22 state workers compensation self-insurance fund. Such claims shall be  
23 served upon the secretary of ~~administration~~ *health and environment* in the  
24 secretary's capacity as administrator of the state workers compensation  
25 self-insurance fund in the manner provided for claims against other  
26 employers under the workers compensation act. The chief attorney for the  
27 department of ~~administration~~ *health and environment*, or another attorney  
28 of the department of ~~administration~~ *health and environment* designated by  
29 the chief attorney, shall represent and defend the state workers  
30 compensation self-insurance fund in all proceedings under the workers  
31 compensation act.

32 (b) The secretary of ~~administration~~ *health and environment* shall  
33 investigate, or cause to be investigated, each claim for compensation  
34 against the state workers compensation self-insurance fund. For the  
35 purposes of such investigations, the secretary of ~~administration~~ *health and*  
36 *environment* is authorized to obtain expert medical advice regarding the  
37 injuries, occupational diseases and disabilities involved in such claims. If,  
38 based upon such investigation and any other available information, the  
39 secretary of ~~administration~~ *health and environment* finds that there is no  
40 material dispute as to any issue involved in the claim, that the claim is  
41 valid and that the claim should be settled by agreement, the secretary of  
42 ~~administration~~ *health and environment* may proceed to enter into such an  
43 agreement with the claimant, for the state workers compensation self-



1 insurance fund. Any such agreement may provide for lump-sum  
2 settlements subject to approval by the director and all such agreements  
3 shall be filed in the office of the director for approval as provided in  
4 K.S.A. 44-527, and amendments thereto. All other claims for  
5 compensation against such fund shall be paid in accordance with the  
6 workers compensation act pursuant to final awards or orders of an  
7 administrative law judge or the board or pursuant to orders and findings of  
8 the director under the workers compensation act.

9 (c) For purposes of the workers compensation act, a volunteer  
10 member of a regional emergency medical response team as provided in  
11 K.S.A. 48-928, and amendments thereto, shall be considered a person in  
12 the service of the state in connection with authorized training and upon  
13 activation for emergency response, except when such duties arise in the  
14 course of employment or as a volunteer for an employer other than the  
15 state.

16 Sec. 7. K.S.A. 44-578 is hereby amended to read as follows: 44-578.  
17 The secretary of ~~administration~~ *health and environment* may adopt rules  
18 and regulations necessary for the administration of the state workers  
19 compensation self-insurance fund, including the processing and settling of  
20 claims for compensation made against such fund. ~~Such rules and~~  
21 ~~regulations shall be subject to the provisions of K.S.A. 75-3706 and~~  
22 ~~amendments thereto and shall be adopted in accordance therewith.~~

23 Sec. 8. K.S.A. 74-712 is hereby amended to read as follows: 74-712.  
24 The expense of the administration of the workers' compensation law shall  
25 be financed in the following manner:

26 (a) The ~~director of workers' compensation~~ *secretary of labor* shall  
27 estimate as soon as practicable after January 1 of each year the expenses  
28 necessary for the administration of the workers' compensation law for the  
29 fiscal year beginning on July 1 thereafter. Such estimate shall be provided  
30 to the legislature, and the legislature shall determine the amount of  
31 administrative expense to be obtained under the provisions of this act from  
32 workers' compensation insurance carriers, self-insurers and group-funded  
33 workers' compensation pools and the amount of such expense to be  
34 obtained from other sources; such carriers' and self-insurers' and group-  
35 funded workers' compensation pools' share of such expense shall be called  
36 "carrier's share of expense";

37 (b) the carrier's share of expense, as determined in subparagraph (a)  
38 hereof, shall be prorated among the insurance carriers writing workers'  
39 compensation insurance in the state, self-insurers and group-funded  
40 workers' compensation pools.

41 The ~~director~~ *secretary of labor* shall determine the total amount of  
42 benefit payments made pursuant to the workmen's compensation act, paid  
43 out as a result of injuries received in the state of Kansas for the

1 immediately preceding calendar year, and the ~~director's~~ *secretary of*  
2 *labor's* determination shall be conclusive. The ~~director~~ *secretary of labor*  
3 shall list the amount of workers' compensation benefits paid as a result of  
4 injuries received in the state of Kansas and paid by each workers'  
5 compensation insurance carrier, self-insurer and group-funded workers'  
6 compensation pool during such period.

7 Sec. 9. K.S.A. 44-512, 44-557, 44-578 and 74-712 and K.S.A. 2011  
8 Supp. 2-224a, 44-523, 44-575 and 44-577 and are hereby repealed.

9 Sec. 10. This act shall take effect and be in force from and after its  
10 publication in the statute book.

11