

SENATE BILL No. 355

By Committee on Commerce

1-30

1 AN ACT concerning labor; relating to employment standards; accident
2 prevention; powers and duties of the secretary of labor regarding labor
3 and wage disputes and workplace inspections; amending K.S.A. 2011
4 Supp. 44-324, 44-5,104, 44-634 and 44-636 and repealing the existing
5 sections; also repealing K.S.A. 44-603, 44-617, 44-625 and 44-628 and
6 K.S.A. 2011 Supp. 44-601b, 44-607, 44-608, 44-609, 44-610, 44-611,
7 44-612, 44-614, 44-615, 44-616, 44-618, 44-619, 44-620, 44-621, 44-
8 623, 44-624, 44-626 and 44-631.

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

11 Section 1. K.S.A. 2011 Supp. 44-324 is hereby amended
12 to read as follows: 44-324. (a) Any proceeding by one or more
13 employees to assert any claim arising under or pursuant to this
14 act may be brought in any court of competent jurisdiction.

15 ~~(b) Whenever the secretary determines under K.S.A. 44-322a, and~~
16 ~~amendments thereto, that an employee has a valid claim for unpaid wages~~
17 ~~and determines that the amount of the claim is less than \$10,000, the~~
18 ~~secretary, upon the written request of the employee, shall take an~~
19 ~~assignment of the claim in trust for such employee and shall take action~~
20 ~~appropriate to enforce or defend such claim. Whenever the secretary~~
21 ~~determines under K.S.A. 44-322a, and amendments thereto, that an~~
22 ~~employee has a valid claim for unpaid wages and determines that the~~
23 ~~amount of the claim is equal to or greater than \$10,000, the secretary, upon~~
24 ~~the written request of the employee, may take an assignment of the claim~~
25 ~~in trust for such employee and if the assessment is taken, shall take action~~
26 ~~appropriate to enforce or defend such claim. With the written consent of~~
27 ~~the assignor, the secretary may settle or adjust any claim assigned pursuant~~
28 ~~to this subsection. Whenever the secretary takes an assignment of a claim~~
29 ~~in trust for an employee under this section, the secretary shall charge and~~
30 ~~collect a fee therefor which fee shall be fixed by rules and regulations~~
31 ~~adopted by the secretary. The fee fixed by rules and regulations shall be in~~
32 ~~an amount of not more than \$25 per claim assigned under this section.~~

33 (c) ~~If the secretary prevails on behalf of the employee, the court shall~~
34 ~~award a judgment to the agency in an amount equal to the cost of~~
35 ~~reasonable attorney fees for such action.~~

36 (d) ~~There is hereby created the wage claims assignment fee fund. The~~

1 secretary shall remit all moneys received for assignment and attorney fees
2 charged and collected under this section to the state treasurer in
3 accordance with the provisions of K.S.A. 75-4215, and amendments
4 thereto. Upon receipt of each such remittance, the state treasurer shall
5 deposit the entire amount in the state treasury. Ten percent of each such
6 deposit shall be credited to the state general fund and the balance shall be
7 credited to the wage claims assignment fee fund. All expenditures from the
8 wage claims assignment fee fund shall be made in accordance with
9 appropriation acts upon warrants of the director of accounts and reports
10 issued pursuant to vouchers approved by the secretary or by a person or
11 persons designated by the secretary.

12 Sec. 2. K.S.A. 2011 Supp. 44-5,104 is hereby amended to read as
13 follows: 44-5,104. (a) Each insurance company or group-funded self-
14 insurance plan providing workers compensation insurance coverage in
15 Kansas shall maintain and shall provide accident prevention programs
16 upon request of the covered employer as a prerequisite for authority to
17 provide such insurance or coverage. The accident prevention programs
18 shall be adequate to furnish accident prevention services required by the
19 nature of the operations of the policyholders or other covered entities and
20 the accident prevention services shall include surveys, recommendations,
21 training programs, consultations, analyses of accident causes, industrial
22 hygiene and industrial health services to implement the program of
23 accident prevention services *at no cost to the insured*. The accident
24 prevention programs shall be staffed with field safety representatives. Each
25 field safety representative shall be a person who is: (1) A college graduate
26 who has a bachelor's degree in science, industrial hygiene, safety or loss
27 control, or engineering, (2) a registered professional engineer, (3) a
28 certified safety professional, who has attained the designation from the
29 board of certified safety professionals, (4) a certified industrial hygienist,
30 who has attained the designation from the American board of industrial
31 hygiene, (5) an individual with five years of experience in occupational
32 safety and health, (6) a person who is working under direct supervision of
33 a person who meets the qualification requirements of this section, (7) a
34 person who has attained the designation of associate in loss control
35 management or associate in risk management from the insurance institute
36 of America, who has attained the designation of occupational safety and
37 health technologist from the board of certified safety professionals, or who
38 has attained any other comparable designation or certification by a
39 recognized organization as determined by the secretary of labor, or (8) an
40 individual who has completed a certified training program in accident
41 prevention services approved by the secretary of labor. The insurance
42 company or group-funded self-insurance plan may employ qualified
43 personnel, retain qualified independent contractors, contract with the

1 policyholder to provide qualified accident prevention personnel and
2 services, or use a combination of such methods to fulfill the obligations
3 imposed by this section. Accident prevention personnel shall have the
4 qualifications required for field safety representatives.

5 (b) The secretary of labor may conduct such inspections as the
6 secretary deems necessary to determine the adequacy of the accident
7 prevention services required by subsection (a) for each insurance company
8 and group-funded self-insurance plan providing workers compensation
9 insurance coverage in Kansas, including, but not limited to, random
10 inspections and those based upon employer complaints. Documented
11 employer complaints shall be appropriately investigated and the results
12 shall be reported to the commissioner of insurance. The secretary shall not
13 be required by this section to inspect each insurance company or group-
14 funded self-insurance plan.

15 (c) A notice that accident prevention services are available to the
16 policyholder from the insurance company shall appear in no less than ten-
17 point boldface type on the front page of each workers compensation
18 insurance policy *or group-funded workers compensation self-insurance*
19 *plan certificate of coverage* delivered or issued for delivery in this state.

20 (d) At least once each year, each insurance company or group-funded
21 self-insurance plan providing workers compensation insurance in Kansas
22 shall submit to the director of ~~workers compensation~~ *industrial safety and*
23 *health* detailed information on the type of accident prevention programs
24 offered to the policyholders by the insurance company or to the covered
25 entities by the group-funded self-insurance plan, as the case may be. The
26 information shall include:

27 (1) The amount of money spent by the insurance company or group-
28 funded self-insured plan on accident prevention services;

29 (2) the names, number and qualifications of field safety
30 representatives employed;

31 (3) the number of site inspections performed;

32 (4) any accident prevention services made available under a
33 contractual arrangement;

34 (5) a specification and listing of the premium size of the risks to
35 which accident prevention services were actually provided;

36 (6) evidence of the effectiveness of and accomplishments in accident
37 prevention; and

38 (7) any additional information required by the director of ~~workers~~
39 ~~compensation~~ *industrial safety and health*.

40 (e) If the insurance company or group-funded self-insurance plan
41 does not maintain or provide the accident prevention services required by
42 this section, the director of ~~workers compensation~~ *industrial safety and*
43 *health* shall notify the commissioner of insurance. Upon receiving such

1 notification, the commissioner of insurance shall presume the insurance
2 company or group-funded self-insurance plan knew or reasonably should
3 have known of the violation and shall assess the penalty prescribed
4 therefore pursuant to K.S.A. 40-2,125, and amendments thereto. The
5 secretary shall send the information and results obtained pursuant to
6 subsection (d) to the insurance commissioner who shall widely
7 disseminate information about the program.

8 (f) The secretary of labor shall employ the personnel necessary to
9 enforce the provisions of this section and shall employ sufficient safety
10 inspectors to perform inspections at job sites or other work places and may
11 audit accident prevention programs of each insurance company or group-
12 funded self-insurance plan which is subject to this section to determine the
13 adequacy of the accident prevention services provided. The safety
14 inspectors shall have the qualifications required for field safety
15 representatives by subsection (a).

16 (g) The insurance company or group-funded self-insurance plan, and
17 any agent, servant, or employee thereof, shall have no liability with respect
18 to any accident based on the allegation that such accident was caused or
19 could have been prevented by a program, inspection or other activity or by
20 a service undertaken or not undertaken by the insurance company or
21 group-funded self-insurance plan for the prevention of accidents in
22 connection with operations of the employer. This immunity shall not affect
23 the liability of the insurance company or group-funded self-insurance plan
24 for compensation or as otherwise provided in this act.

25 Sec. 3. K.S.A. 2011 Supp. 44-634 is hereby amended to read as
26 follows: 44-634. It shall be the duty of the secretary of labor to collect,
27 assort, arrange and present in annual reports to the governor, to be
28 transmitted biennially by the governor to the legislature, statistical details
29 relating to all labor and industrial pursuits in the state; to the subjects of
30 cooperation, strikes and other labor difficulties; to trade unions and other
31 labor organizations and their effect upon labor and capital; to other matters
32 relating to the commercial, industrial, social, educational, moral and
33 sanitary conditions prevailing within the state; and the exploitation of such
34 other subjects as will tend to promote the permanent prosperity of the
35 respective industries of the state.

36 It shall also be the duty of the secretary of labor to cause to be enforced
37 all laws regulating the employment of children and minors; all laws
38 established for the protection of health, lives and limbs of operators in
39 workshops and factories, ~~on railroads~~, and other places; and all laws
40 enacted for the protection of the working classes now in force or that may
41 hereafter be enacted. In the annual report the secretary of labor shall also
42 give an account of all proceedings which have been taken in accordance
43 with the provisions of this act, or any of the other laws herein referred to,

1 and in addition thereto such remarks, suggestions and recommendations as
2 the secretary of labor may deem necessary for the information of the
3 legislature.

4 Sec. 4. K.S.A. 2011 Supp. 44-636 is hereby amended to read as
5 follows: 44-636. (a) The secretary of labor shall have power to enter ~~any~~
6 ~~factory or mill, workshop, private works, any~~ public works or state agency
7 or institution, ~~mercantile establishment, laundry or any other place of~~
8 ~~business where labor is or is intended to be performed for any purpose,~~
9 when the same are open or in operation, for the purpose of gathering facts
10 and statistics such as are contemplated by this act, and to examine into the
11 methods of protection from danger to employees and the sanitary
12 conditions in and around such buildings and places and to keep a record
13 thereof of such inspection.

14 If it shall be found upon such investigation that the heating, lighting,
15 ventilation, occupant capacity or sanitary arrangement of any such
16 establishment or place is such as to be injurious to the health of persons
17 employed or residing therein, or that the means of egress in case of fire or
18 other disaster are not sufficient, or that the belting, shafting, gearing,
19 ~~elevators,~~ drums, saws, cogs or machinery, in any such establishment or
20 place are so located or are in a condition so as to be dangerous, or are not
21 sufficiently guarded, or that the vats, pans or any other structures filled
22 with molten metal, hot liquid or hazardous materials or substances are not
23 surrounded with proper safeguards for preventing accidents, injury or
24 illness to those persons in, or near them, or that the construction or
25 condition of any building or buildings, or any boiler, machinery or other
26 appurtenances in or about any place as described in this section is such as
27 to be dangerous or injurious to the persons employed or residing therein,
28 or that the methods of operation are such as to be unnecessarily dangerous
29 or injurious to the persons employed or residing therein, or that any other
30 condition which is within the control of the owner, proprietor, agent,
31 administrator or lessee of any such building, establishment or place to be
32 found to be dangerous or injurious to any persons employed therein or to
33 any other person or persons, the secretary or the authorized agent of the
34 secretary after making such inspection shall notify in writing the owner,
35 proprietor, agent, administrator or lessee of such building, establishment,
36 or place. Such notification may also include an order that requires the
37 provisions of such safeguards or safety devices or the making of such
38 alterations or additions or changes in methods of operation or the taking of
39 any other measures the secretary may deem appropriate and necessary for
40 the safety and protection of the employees or other persons endangered by
41 such conditions and the amount of time granted by the secretary for
42 making any such alterations, additions, changes or taking such other
43 methods as required. Such amount of time shall not exceed 60 days after

1 service of the notice and the order unless an extension thereof is requested
2 for good cause shown by the person named in the order, and such
3 extension is granted by the secretary *or the authorized agent of the*
4 *secretary.*

5 (b) The notification required by subsection (a) shall include notice of
6 the right to a hearing concerning any order included therein. Any such
7 order shall become final unless within 15 days after service of the notice
8 and order, the person or persons named therein shall request in writing a
9 hearing by the secretary. If a request is made for a hearing the date of the
10 hearing shall not be more than 30 days after such request is made. Orders
11 under subsection (a), and hearings thereon, shall be subject to the
12 provisions of the Kansas administrative procedure act.

13 (c) No person, firm or corporation, nor any officer, agent or employee
14 thereof, shall remove or require to be removed, or made ineffective any
15 practical safeguard around or safety attachment to any machinery, vats,
16 pan, or other apparatus or device mentioned in this section while the same
17 is in use, ~~except for the purpose of immediately making repairs thereto,~~
18 ~~and all safeguards or safety attachments so removed shall be promptly~~
19 ~~replaced before the dangerous machine, apparatus or device is returned to~~
20 ~~normal use or operation. Except as otherwise provided,~~ No person shall
21 require or permit the operation of, or operate, the dangerous machine,
22 apparatus or device without the required safeguards or safety attachments.

23 (d) If the secretary of labor determines that conditions or products in
24 any place of employment are such that a danger exists which could
25 reasonably be expected to cause death or serious physical harm
26 immediately, or before such danger can be eliminated through the
27 enforcement provisions otherwise provided by law, the secretary may, in
28 accordance with the provisions of K.S.A. 77-536, and amendments
29 thereto, order the immediate taking of any steps necessary to avoid, correct
30 or remove such imminent danger and prohibit the employment or presence
31 of any individual in locations or under conditions where such imminent
32 danger exists, except individuals whose presence is necessary to avoid,
33 correct or remove such imminent danger or to prevent any avoidable loss
34 of production facilities or product.

35 (e) Upon issuance of the order authorized by subsection (d) ~~of this~~
36 ~~section~~ and upon the request of any party who is adversely affected
37 thereby, the secretary shall fix a place and time for a hearing to be held on
38 such order in accordance with the provisions of the Kansas administrative
39 procedure act.

40 (f) No person shall discharge or in any manner discriminate against
41 any employee because such employee has filed a complaint with, or
42 furnished information to, the secretary of labor concerning conditions or
43 situations alleged to be unsafe or hazardous or otherwise covered by the

1 provisions of this act.

2 (g) Any person who willfully violates any provision of this section or
3 any lawful order issued pursuant to this section shall be guilty of a
4 misdemeanor and shall be subject to a fine of not less than \$25 nor more
5 than \$100. Each day that such violation exists shall constitute a separate
6 offense.

7 (h) An action brought pursuant to this section shall not constitute a
8 bar to enforcement of the provisions of this section by injunction or other
9 appropriate remedy, and upon request of the secretary of labor, the attorney
10 general shall have the power to institute and maintain in the name of the
11 state any and all appropriate enforcement procedures.

12 (i) *The provisions of this sections shall not apply to any employer or*
13 *place of employment that is subject to the provisions of the occupational*
14 *safety and health act of 1970, 29 U.S.C. § 651 et seq., except as provided*
15 *in 29 C.F.R. § 1908 et seq.*

16 Sec. 5. K.S.A. 44-603, 44-617, 44-625 and 44-628 and K.S.A. 2011
17 Supp. 44-324, 44-5,104, 44-601b, 44-607, 44-608, 44-609, 44-610, 44-
18 611, 44-612, 44-614, 44-615, 44-616, 44-618, 44-619, 44-620, 44-621, 44-
19 623, 44-624, 44-626, 44-631, 44-634 and 44-636 are hereby repealed.

20 Sec. 6. This act shall take effect and be in force from and after its
21 publication in the statute book.