

REPORTS OF STANDING COMMITTEES

MR. PRESIDENT:

The Committee on **Commerce** recommends **HB 2673** be amended on page 1, by striking all in lines 6 and 7 and inserting:

"Section 1. K.S.A. 2011 Supp. 44-324 is hereby amended to read as follows: 44-324.

(a) Any proceeding by one or more employees to assert any claim arising under or pursuant to this act may be brought in any court of competent jurisdiction.

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

(c) ~~If the secretary prevails on behalf of the employee, the court shall award a judgment~~

~~to the agency in an amount equal to the cost of reasonable attorney fees for such action.~~

(d) There is hereby created the wage claims assignment fee fund. The secretary shall remit all moneys received for assignment and attorney fees charged and collected under this section 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. Ten percent of each such deposit shall be credited to the state general fund and the balance shall be credited to the wage claims assignment fee fund. All expenditures from the wage claims assignment fee fund shall be made in accordance with appropriation acts upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the secretary or by a person or persons designated by the secretary.

Sec. 2. K.S.A. 2011 Supp. 44-5,104 is hereby amended to read as follows: 44-5,104. (a) Each insurance company or group-funded self-insurance plan providing workers compensation insurance coverage in Kansas shall maintain and shall provide accident prevention programs upon request of the covered employer as a prerequisite for authority to provide such insurance or coverage. The accident prevention programs shall be adequate to furnish accident prevention services required by the nature of the operations of the policyholders or other covered entities and the accident prevention services shall include surveys, recommendations, training programs, consultations, analyses of accident causes, industrial hygiene and industrial health services to implement the program of accident prevention services at no cost to the insured. The accident prevention programs shall be staffed with field safety representatives. Each field safety representative shall be a person who is: (1) A college graduate who has a bachelor's degree in science, industrial hygiene, safety or loss control, or engineering, (2) a registered professional engineer, (3) a certified safety professional, who has attained the designation from the board of certified safety professionals, (4) a certified industrial hygienist, who has attained the designation from the American board of industrial hygiene, (5) an individual with five years of

experience in occupational safety and health, (6) a person who is working under direct supervision of a person who meets the qualification requirements of this section, (7) a person who has attained the designation of associate in loss control management or associate in risk management from the insurance institute of America, who has attained the designation of occupational safety and health technologist from the board of certified safety professionals, or who has attained any other comparable designation or certification by a recognized organization as determined by the secretary of labor, or (8) an individual who has completed a certified training program in accident prevention services approved by the secretary of labor. The insurance company or group-funded self-insurance plan may employ qualified personnel, retain qualified independent contractors, contract with the policyholder to provide qualified accident prevention personnel and services, or use a combination of such methods to fulfill the obligations imposed by this section. Accident prevention personnel shall have the qualifications required for field safety representatives.

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

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

(d) At least once each year, each insurance company or group-funded self-insurance plan

providing workers compensation insurance in Kansas shall submit to the director of ~~workers compensation industrial safety and health~~ detailed information on the type of accident prevention programs offered to the policyholders by the insurance company or to the covered entities by the group-funded self-insurance plan, as the case may be. The information shall include:

- (1) The amount of money spent by the insurance company or group-funded self-insured plan on accident prevention services;
 - (2) the names, number and qualifications of field safety representatives employed;
 - (3) the number of site inspections performed;
 - (4) any accident prevention services made available under a contractual arrangement;
 - (5) a specification and listing of the premium size of the risks to which accident prevention services were actually provided;
 - (6) evidence of the effectiveness of and accomplishments in accident prevention; and
 - (7) any additional information required by the director of ~~workers compensation industrial safety and health~~.
- (e) If the insurance company or group-funded self-insurance plan does not maintain or provide the accident prevention services required by this section, the director of ~~workers compensation industrial safety and health~~ shall notify the commissioner of insurance. Upon receiving such notification, the commissioner of insurance shall presume the insurance company or group-funded self-insurance plan knew or reasonably should have known of the violation and shall assess the penalty prescribed therefore pursuant to K.S.A. 40-2,125, and amendments thereto. The secretary shall send the information and results obtained pursuant to subsection (d) to the insurance commissioner who shall widely disseminate information about the program.

- (f) The secretary of labor shall employ the personnel necessary to enforce the provisions of this section and shall employ sufficient safety inspectors to perform inspections at job sites or other

work places and may audit accident prevention programs of each insurance company or group-funded self-insurance plan which is subject to this section to determine the adequacy of the accident prevention services provided. The safety inspectors shall have the qualifications required for field safety representatives by subsection (a).

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

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

It shall also be the duty of the secretary of labor to cause to be enforced all laws regulating the employment of children and minors; all laws established for the protection of health, lives and limbs of operators in workshops and factories, ~~on railroads~~, and other places; and all laws enacted for the protection of the working classes now in force or that may hereafter be enacted. In the annual report the secretary of labor shall also give an account of all proceedings which have been taken in accordance

with the provisions of this act, or any of the other laws herein referred to, and in addition thereto such remarks, suggestions and recommendations as the secretary of labor may deem necessary for the information of the legislature.

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

If it shall be found upon such investigation that the heating, lighting, ventilation, occupant capacity or sanitary arrangement of any such establishment or place is such as to be injurious to the health of persons employed or residing therein, or that the means of egress in case of fire or other disaster are not sufficient, or that the belting, shafting, gearing, elevators, drums, saws, cogs or machinery, in any such establishment or place are so located or are in a condition so as to be dangerous, or are not sufficiently guarded, or that the vats, pans or any other structures filled with molten metal, hot liquid or hazardous materials or substances are not surrounded with proper safeguards for preventing accidents, injury or illness to those persons in, or near them, or that the construction or condition of any building or buildings, or any boiler, machinery or other appurtenances in or about any place as described in this section is such as to be dangerous or injurious to the persons employed or residing therein, or that the methods of operation are such as to be unnecessarily dangerous or injurious to the persons employed or residing therein, or that any other condition which is within the control of the owner, proprietor, agent, administrator or lessee of any such building, establishment or place to be found to be dangerous or injurious to any persons employed therein or to any other person or persons,

the secretary or the authorized agent of the secretary after making such inspection shall notify in writing the owner, proprietor, agent, administrator or lessee of such building, establishment, or place. Such notification may also include an order that requires the provisions of such safeguards or safety devices or the making of such alterations or additions or changes in methods of operation or the taking of any other measures the secretary may deem appropriate and necessary for the safety and protection of the employees or other persons endangered by such conditions and the amount of time granted by the secretary for making any such alterations, additions, changes or taking such other methods as required. Such amount of time shall not exceed 60 days after service of the notice and the order unless an extension thereof is requested for good cause shown by the person named in the order, and such extension is granted by the secretary or the authorized agent of the secretary.

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

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

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

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

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

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

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

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

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

And by renumbering sections accordingly:

On page 1, in the title, in line 1 by striking all following "ACT"; by striking all in lines 2 and 3 and inserting "concerning labor; relating to employment standards; accident prevention; powers and duties of the secretary of labor regarding labor and wage disputes and workplace inspections; amending K.S.A. 2011 Supp. 44-324, 44-5,104, 44-634 and 44-636 and repealing the existing sections; also repealing K.S.A. 44-603, 44-617, 44-625 and 44-628 and K.S.A. 2011 Supp. 44-601b, 44-607, 44-608, 44-609, 44-610, 44-611, 44-612, 44-614, 44-615, 44-616, 44-618, 44-619, 44-620, 44-621, 44-623, 44-624, 44-626 and 44-631.";

And the bill be passed as amended.

Chairperson