As Amended by House Committee

Session of 2012

HOUSE BILL No. 2558

By Committee on Commerce and Economic Development

AN ACT concerning workers compensation; pertaining to the administration of the state workers compensation self-insurance fund; pertaining to the state workplace health and safety program; pertaining to certain time limitation on filing; pertaining to duties of the secretary of labor; amending K.S.A. 44-512, 44-557, 44-578 and 74-712 and K.S.A. 2011 Supp. 2-224a, 44-523, 44-532a, 44-575 and 44-577 and repealing the existing sections.

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

Section 1. K.S.A. 2011 Supp. 2-224a is hereby amended to read as follows: 2-224a. (a) Notwithstanding the provisions of K.S.A. 44-576, and amendments thereto, the state fair board is hereby authorized to purchase workers compensation insurance from an admitted carrier. Any contract for the purchase of workers compensation insurance entered into by the state fair board shall be purchased in the manner prescribed for the purchase of supplies, materials, equipment and contractual services as provided in K.S.A. 75-3738 through 75-3744, and amendments thereto, and any such contract having a premium or rate in excess of $500 shall be purchased on the basis of sealed bids. Such contract shall not be subject to the provisions of K.S.A. 75-4101 through 75-4114 and K.S.A. 2011 Supp. 75-4125, and amendments thereto.

(b) If the state fair board enters into a contract for the purchase of workers compensation insurance as described in subsection (a), from and after the end of the payroll period in which such workers compensation policy takes effect, the state fair board shall not be subject to the self-insurance assessment prescribed by K.S.A. 44-576, and amendments thereto, and the director of accounts and reports shall cease to transfer any amounts for such self-assessment for the state fair board pursuant to such statute, except that any moneys paid relating to existing claims with the state workers compensation self-insurance fund made by the state fair board shall be assessed to the state fair board until all such claims have been closed and settled.

(c) Notwithstanding the provisions of K.S.A. 44-575, and amendments thereto, if the state fair board enters into a contract for the purchase of workers compensation insurance as described in subsection (a), the state workers compensation self-insurance fund shall not be liable
for any compensation claims under the workers compensation act relating
to the state fair board and arising during the term of such contract, or for
any other amounts otherwise required to be paid under the workers
compensation act during the term of such contract.

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

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

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

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

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

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

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

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

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

(3) on application for good cause shown.

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

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

(e) (1) If a party or a party's attorney believes that the administrative law judge to whom a case is assigned cannot afford that party a fair hearing in the case, the party or attorney may file a motion for change of administrative law judge. A party or a party's attorney shall not file more than one motion for change of administrative law judge in a case. The administrative law judge shall promptly hear the motion informally upon reasonable notice to all parties who have appeared in the case. Notwithstanding the provisions of K.S.A. 44-552, and amendments thereto, the administrative law judge shall decide, in the administrative law judge's discretion, whether or not the hearing of such motion shall be taken down by a certified shorthand reporter. If the administrative law judge disqualifies the administrative law judge's self, the case shall be assigned to another administrative law judge by the director. If the administrative law judge refuses to disqualify the administrative law judge's self, the
party seeking a change of administrative law judge may file in the district
court of the county in which the accident or injury occurred the affidavit
provided in subsection (e)(2). If an affidavit is to be filed in the district
court, it shall be filed within 10 days request that the director reassign the
case.

(2) If a party or a party’s attorney files an affidavit alleging any of the
grounds specified in subsection (e)(3), the chief judge shall at once
determine, or refer the affidavit to another district court judge for prompt
determination of, the legal sufficiency of the affidavit. If the affidavit is
filed in a district court in which there is no other judge who is qualified to
hear the matter, the chief judge shall at once notify the departmental justice
for the district and request the appointment of another district judge to
determining the legal sufficiency of the affidavit. If the affidavit is found
to be legally sufficient, the district court judge shall order the director to
assign the case to another administrative law judge or to an assistant
director. The party or a party’s attorney shall file with the director an
affidavit alleging one or more of the grounds specified in subsection (e)
(3). If the director finds legally sufficient grounds, the director shall assign
the case to another administrative law judge or to an assistant director.

(3) Grounds which may be alleged as provided in subsection (e)(2)
for change of administrative law judge are that:

(A) The administrative law judge has been engaged as counsel in the
case prior to the appointment as administrative law judge.
(B) The administrative law judge is otherwise interested in the case.
(C) The administrative law judge is related to either party in the case.
(D) The administrative law judge is a material witness in the case.
(E) The party or party’s attorney filing the affidavit has cause to
believe and does believe that on account of the personal bias, prejudice or
interest of the administrative law judge such party cannot obtain a fair and
impartial hearing. Such affidavit shall state the facts and the reasons for
the belief that bias, prejudice or an interest exists.

(4) In any affidavit filed pursuant to subsection (e)(2), the recital of
previous rulings or decisions by the administrative law judge on legal
issues or concerning prior motions for change of administrative law judge
filed by counsel or such counsel’s law firm, pursuant to this subsection,
shall not be deemed legally sufficient for any belief that bias or prejudice exists.

(5) A determination by the director as to the legal sufficiency of
the affidavit for recusal submitted above shall be appealable to the
courts of appeal under the provisions of K.S.A. 44-556, and
amendments thereto.

(f) (1) In any claim that has not proceeded to a regular hearing, a
settlement hearing, or an agreed award under the workers compensation
act within three years from the date of filing an application for hearing pursuant to K.S.A. 44-534, and amendments thereto, the employer shall be permitted to file with the division an application for dismissal based on lack of prosecution. The matter shall be set for hearing with notice to the claimant’s attorney, if the claimant is represented, or to the claimant’s last known address. The administrative law judge may grant an extension for good cause shown, which shall be conclusively presumed in the event that the claimant has not reached maximum medical improvement, provided such motion to extend is filed prior to the three year limitation provided for herein. If the claimant cannot establish good cause, the claim shall be dismissed with prejudice by the administrative law judge for lack of prosecution. Such dismissal shall be considered a final disposition at a full hearing on the claim for purposes of employer reimbursement from the fund pursuant to subsection (b) of K.S.A. 44-534a, and amendments thereto.

(2) In any claim which has not proceeded to regular hearing within one year from the date of a preliminary award denying compensability of the claim, the employer shall be permitted to file with the division an application for dismissal based on lack of prosecution. The matter shall be set for hearing with notice to the claimant’s attorney, if the claimant is represented, or to the claimant’s last known address. Unless the claimant can prove a good faith reason for delay, the claim shall be dismissed with prejudice by the administrative law judge. Such dismissal shall be considered a final disposition at a full hearing on the claim for purposes of employer reimbursement from the fund pursuant to subsection (b) of K.S.A. 44-534a, and amendments thereto.

(3) This section shall not affect any future benefits which have been left open upon proper application by an award or settlement.

Sec. 4. K.S.A. 2011 Supp. 44-532a is hereby amended to read as follows: 44-532a. (a) If an employer has no insurance to secure the payment of compensation or has insufficiently funded a self-insurance bond, or has insufficiently funded a letter of credit as provided in subsection (b)(1) and (2) of K.S.A. 44-532, and amendments thereto, and such employer is financially unable to pay compensation to an injured worker as required by the workers compensation act, or such employer cannot be located and required to pay such compensation, the injured worker may apply to the director for an award of the compensation benefits, including medical compensation, to which such injured worker is entitled, to be paid from the workers compensation fund. Whenever a worker files an application under this section, the matter shall be assigned to an administrative law judge for hearing. If the administrative law judge is satisfied as to the existence of the conditions prescribed by this section, the administrative law judge...
may make an award, or modify an existing award, and prescribe the payments to be made from the workers compensation fund as provided in K.S.A. 44-569, and amendments thereto. The award shall be certified to the commissioner of insurance, and upon receipt thereof, the commissioner of insurance shall cause payment to be made to the worker in accordance therewith.

(b) The commissioner of insurance, acting as administrator of the workers compensation fund, shall have a cause of action against the employer for recovery of any amounts paid from the workers compensation fund pursuant to this section. Such action shall be filed in the district court of the county in which the accident occurred or where the contract of employment was entered into.

Sec. 4. K.S.A. 44-557 is hereby amended to read as follows: 44-557. (a) It is hereby made the duty of every employer to make or cause to be made a report to the director of any accident, or claimed or alleged accident, to any employee which occurs in the course of the employee's employment and of which the employer or the employer's supervisor has knowledge, which report shall be made upon a form to be prepared by the director, within 28 days, after the receipt of such knowledge, if the personal injuries which are sustained by such accidents, are sufficient wholly or partially to incapacitate the person injured from labor or service for more than the remainder of the day, shift or turn on which such injuries were sustained.

(b) When such accident has been reported and subsequently such person has died, a supplemental report shall be filed with the director within 28 days after receipt of knowledge of such death, stating such facts and any other facts in connection with such death or as to the dependents of such deceased employee which the director may require. Such report or reports shall not be used nor considered as evidence before the director, any administrative law judge, the board or in any court in this state.

(c) No limitation of time in the workers compensation act shall begin to run unless a report of the accident as provided in this section has been filed at the office of the director if the injured employee has given notice of such accident as provided by K.S.A. 44-520, and amendments thereto, except that any proceeding for compensation for any such injury or death, where report of the accident has not been filed, must be commenced by serving upon the employer a written claim pursuant to K.S.A. 44-520a and amendments thereto within one year from the date of the accident, suspension of payment of disability compensation, the date of the last medical treatment authorized by the employer, or the death of such employee referred to in K.S.A. 44-520a and amendments thereto.

(d)(c) The repeated failure of any employer to file or cause to be filed any report required by this section shall be subject to a civil penalty
for each violation of not to exceed $250.

(e) (d) Any civil penalty imposed by this section shall be recovered, by the assistant attorney general upon information received from the director, by issuing and serving upon such employer a summary order or statement of the charges with respect thereto and a hearing shall be conducted thereon in accordance with the provisions of the Kansas administrative procedure act, except that, at the discretion of the director, such civil penalties may be assessed as costs in a workers compensation proceeding by an administrative law judge upon a showing by the assistant attorney general that a required report was not filed which pertains to a claim pending before the administrative law judge.

Sec. 5. K.S.A. 2011 Supp. 44-575 is hereby amended to read as follows: 44-575. (a) As used in K.S.A. 44-575 through 44-580, and amendments thereto, "state agency" means the state, or any department or agency of the state, but not including the Kansas turnpike authority, the university of Kansas hospital authority, any political subdivision of the state or the district court with regard to district court officers or employees whose total salary is payable by counties.

(b) For the purposes of providing for the payment of compensation for claims arising on and after July 1, 1974, and all other amounts required to be paid by any state agency as a self-insured employer under the workers compensation act and any amendments or additions thereto, there is hereby established the state workers compensation self-insurance fund in the state treasury. The name of the state workmen's compensation self-insurance fund is hereby changed to the state workers compensation self-insurance fund. Whenever the state workmen's compensation self-insurance fund is referred to or designated by any statute, contract or other document, such reference or designation shall be deemed to apply to the state workers compensation self-insurance fund.

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

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

(e) The secretary of administration health and environment shall
remit all moneys received by or for the secretary in the capacity as
administrator of the state workers compensation self-insurance fund, 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 state workers compensation self-insurance fund.

(f) There is hereby established the state workplace health and safety
program within the state workers compensation self-insurance program of
the department of administration health and environment. The secretary of
administration health and environment shall implement and the division of
industrial health and safety of the Kansas department of labor shall
administer the state workplace health and safety program for state
agencies. The state workplace health and safety program shall include, but
not be limited to:

1. Workplace health and safety hazard surveys in all state agencies,
   including onsite interviews with employees;
2. workplace health and safety hazard prevention services, including
   inspection and consultation services;
3. procedures for identifying and controlling workplace hazards;
4. development and dissemination of health and safety informational
   materials, plans, rules and work procedures; and
(5) training for supervisors and employees in healthful and safe work practices.

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

(b) The secretary of administration health and environment shall investigate, or cause to be investigated, each claim for compensation against the state workers compensation self-insurance fund. For the purposes of such investigations, the secretary of administration health and environment is authorized to obtain expert medical advice regarding the injuries, occupational diseases and disabilities involved in such claims. If, based upon such investigation and any other available information, the secretary of administration health and environment finds that there is no material dispute as to any issue involved in the claim, that the claim is valid and that the claim should be settled by agreement, the secretary of administration health and environment may proceed to enter into such an agreement with the claimant, for the state workers compensation self-insurance fund. Any such agreement may provide for lump-sum settlements subject to approval by the director and all such agreements shall be filed in the office of the director for approval as provided in K.S.A. 44-527, and amendments thereto. All other claims for compensation against such fund shall be paid in accordance with the workers compensation act pursuant to final awards or orders of an administrative law judge or the board or pursuant to orders and findings of the director under the workers compensation act.

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

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

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

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

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

The director secretary of labor shall determine the total amount of
benefit payments made pursuant to the workmen's compensation act, paid
out as a result of injuries received in the state of Kansas for the
immediately preceding calendar year, and the director's secretary of
labor's determination shall be conclusive. The director secretary of labor
shall list the amount of workers' compensation benefits paid as a result of
injuries received in the state of Kansas and paid by each workers'
compensation insurance carrier, self-insurer and group-funded workers'
compensation pool during such period.

Sec. 9. K.S.A. 44-512, 44-557, 44-578 and 74-712 and K.S.A.
2011 Supp. 2-224a, 44-523, 44-532a, 44-575 and 44-577 and are hereby
repealed.

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