Session of 2012

SENATE BILL No. 416

By Committee on Commerce

2-10

AN ACT concerning the state workplace health and safety program; relating to implementation and administration of the program; pertaining to transfer of the program from the department of health and environment to the department of labor; amending K.S.A. 2011 Supp. 44-575 and repealing the existing section.

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

New Section. 1. (a) All of the powers, duties and functions of the secretary of health and environment with regard to the state workplace health and safety program established in K.S.A. 44-575, and amendments thereto, are hereby transferred to and conferred and imposed upon the secretary of labor.

(b) The secretary of labor shall be the successor in every way to the powers, duties and functions of the secretary of health and environment associated with the state workplace health and safety program established in K.S.A. 44-575, and amendments thereto. Every act performed in the exercise of such powers, duties and functions by or under the authority of the secretary of labor shall be deemed to have the same force and effect as if performed by the secretary of health and environment in whom such powers, duties and functions were vested prior to the effective date of this act.

(c) Whenever the department of health and environment, the state workplace health and safety program, or words of like effect, are referred to or designated by a statute, contract, memorandum of agreement or other document, and such reference or designation is in regard to any of the powers, duties and functions transferred pursuant to subsection (a), such reference or designation shall be deemed to apply to the state workplace health and safety program established within the department of labor. Whenever the secretary of health and environment or words of like effect, are referred to or designated by a statute, contract, memorandum of agreement or other document, and such reference is in regard to any of the powers, duties and functions transferred to the secretary of labor pursuant to subsection (a), such reference shall be deemed to apply to the secretary of labor.

(d) All rules and regulations, orders and directives of the secretary of health and environment that relate to the workplace health and safety
program, or the powers, duties and functions transferred under subsection (a), which are in effect on the effective date of this act shall continue to be effective and shall be deemed to be rules and regulations, orders and directives of the department of labor or the secretary of labor until revised, amended, revoked or nullified pursuant to law.

(e) The secretary of labor shall have the legal custody of all records, memoranda, writings, entries, prints, representations, electronic data or combinations thereof of any act, transaction, occurrence or event of the state workplace health and safety program in the legal custody of the secretary of health and environment prior to the effective date of this act.

(f) The department of labor shall succeed to all property, property rights and records which were used for or pertain to the performance of powers, duties and functions transferred from the department of health and environment to the department of labor pursuant to this act.

(g) All officers and employees of the department of health and environment who, immediately prior to the effective date of this act, are engaged in the performance of powers, duties or functions of the state workplace health and safety program transferred by this act and who, in the opinion of the secretary of labor, are necessary to perform the powers, duties and functions of the state workplace health and safety program, shall be transferred to, and shall become officers and employees of the department of labor.

(h) Such transferred officers and employees of the department of health and environment who, immediately prior to the effective date of this act, are engaged in the performance of powers, duties or functions of the state workplace health and safety program transferred by this act and who, in the opinion of the secretary of labor, are necessary to perform the powers, duties and functions of the state workplace health and safety program, shall be transferred to, and shall become officers and employees of the department of labor.

(i) No suit, action or other proceeding, judicial or administrative, lawfully commenced, or which could have been commenced, by or against any state agency or program mentioned in this act, or by or against any officer of the state in such officer’s official capacity or in relation to the discharge of such officer’s official duties, shall abate by reason of the governmental reorganization effected under the provisions of this act. The court may allow any such suit, action or other proceeding to be maintained by or against the successor of any such state agency or any officer affected.

(j) When any conflict arises as to the disposition of any property,
power, duty or function as a result of the transfer of powers, duties and
corresponding workplace health and safety program pursuant to
subsection (a), such conflict shall be resolved by the governor, whose
decision shall be final.

Sec. 2. 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 the following: (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 established by 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) (1) There is hereby established the state workplace health and
safety program within the state workers compensation self insurance
program of the department of administration. The secretary of
administration labor shall implement and 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) (A) Workplace health and safety hazard surveys in all state
agencies, including onsite interviews with employees;

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

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

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

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

(2) For purposes of establishing and operating the state workplace
health and safety program there is hereby established the state workplace
health and safety program fund in the state treasury. The state workplace
health and safety program fund shall be administered by the secretary of
labor. The secretary of labor shall certify to the secretary of health and
environment and the director of accounts and reports the amount
necessary to operate the state workplace health and safety program at
such times as agreed to by the secretary of labor and the secretary of health and environment. Upon such certification, the director of accounts and reports shall transfer such certified amount from the state workers compensation self-insurance fund to the state workplace health and safety program fund.

Sec. 3. K.S.A. 2011 Supp. 44-575 is hereby repealed.

Sec. 4. This act shall take effect and be in force from and after its publication in the statute book.