

HOUSE BILL No. 2296

By Committee on Insurance

2-13

1 AN ACT concerning insurance; relating to the Kansas automobile injury
2 reparations act; pertaining to owner's failure to maintain financial
3 security; penalties and impoundment procedures; amending K.S.A.
4 2018 Supp. 40-3104 and repealing the existing section.

5
6 *Be it enacted by the Legislature of the State of Kansas:*

7 Section 1. K.S.A. 2018 Supp. 40-3104 is hereby amended to read as
8 follows: 40-3104. (a) Every owner shall provide motor vehicle liability
9 insurance coverage in accordance with the provisions of this act for every
10 motor vehicle owned by such person, unless such motor vehicle: (1) Is
11 included under an approved self-insurance plan as provided in subsection
12 (f); (2) is used as a driver training motor vehicle, as defined in K.S.A. 72-
13 4005, and amendments thereto, in an approved driver training course by a
14 school district or an accredited nonpublic school under an agreement with
15 a motor vehicle dealer, and such motor vehicle liability insurance coverage
16 is provided by the school district or accredited nonpublic school; (3) is
17 included under a qualified plan of self-insurance approved by an agency of
18 the state in which such motor vehicle is registered and the form prescribed
19 in ~~subsection (b) of K.S.A. 40-3106(b)~~, and amendments thereto, has been
20 filed; or (4) is expressly exempted from the provisions of this act.

21 (b) An owner of an uninsured motor vehicle shall not permit the
22 operation thereof upon a highway or upon property open to use by the
23 public, unless such motor vehicle is expressly exempted from the
24 provisions of this act.

25 (c) No person shall knowingly drive an uninsured motor vehicle upon
26 a highway or upon property open to use by the public, unless such motor
27 vehicle is expressly exempted from the provisions of this act.

28 (d) (1) Any person operating a motor vehicle upon a highway or upon
29 property open to use by the public shall display, upon demand, evidence of
30 financial security to a law enforcement officer. Such evidence of financial
31 security ~~which~~ *that* meets the requirements of subsection (e) may be
32 displayed on a cellular phone or any other type of portable electronic
33 device. The law enforcement officer to whom such evidence of financial
34 security is displayed shall view only such evidence of financial
35 responsibility. Such law enforcement officer shall be prohibited from
36 viewing any other content or information stored on such cellular phone or

1 other type of portable electronic device. The law enforcement officer shall
2 issue a citation to any person who fails to display evidence of financial
3 security upon such demand. The law enforcement officer shall transmit a
4 copy of the insurance verification form prescribed by the secretary of
5 revenue with the copy of the citation transmitted to the court.

6 (2) No citation shall be issued to any person for failure to provide
7 proof of financial security when evidence of financial security meeting the
8 standards of subsection (e) is displayed upon demand of a law enforcement
9 officer. Whenever the authenticity of such evidence is questionable, the
10 law enforcement officer may initiate the preparation of the insurance
11 verification form prescribed by the secretary of revenue by recording
12 information from the evidence of financial security displayed. The officer
13 shall immediately forward the form to the department of revenue, and the
14 department shall proceed with verification in the manner prescribed in the
15 following paragraph. Upon return of a form indicating that insurance was
16 not in force on the date indicated on the form, the department shall
17 immediately forward a copy of the form to the law enforcement officer
18 initiating preparation of the form.

19 (e) Unless the insurance company subsequently submits an insurance
20 verification form indicating that insurance was not in force, no person
21 charged with violating subsection (b), (c) or (d) shall be convicted if such
22 person produces in court, within 10 days of the date of arrest or of issuance
23 of the citation, evidence of financial security for the motor vehicle
24 operated, which was valid at the time of arrest or of issuance of the
25 citation. Such evidence of financial security may be produced by
26 displaying such information on a cellular phone or any other type of
27 portable electronic device. Any person to whom such evidence of financial
28 security is displayed on a cellular phone or any other type of portable
29 electronic device shall be prohibited from viewing any other content or
30 information stored on such cellular phone or other type of portable
31 electronic device. For the purpose of this subsection, evidence of financial
32 security shall be provided by a policy of motor vehicle liability insurance,
33 an identification card or certificate of insurance issued to the policyholder
34 by the insurer which provides the name of the insurer, the policy number,
35 make and year of the vehicle and the effective and expiration dates of the
36 policy, or a certificate of self-insurance signed by the commissioner of
37 insurance. Upon the production in court of evidence of financial security,
38 the court shall record the information displayed thereon on the insurance
39 verification form prescribed by the secretary of revenue, immediately
40 forward such form to the department of revenue, and stay any further
41 proceedings on the matter pending a request from the prosecuting attorney
42 that the matter be set for trial. Upon receipt of such form the department
43 shall mail the form to the named insurance company for verification that

1 insurance was in force on the date indicated on the form. It shall be the
2 duty of insurance companies to notify the department within 30 calendar
3 days of the receipt of such forms of any insurance that was not in force on
4 the date specified. Upon return of any form to the department indicating
5 that insurance was not in force on such date, the department shall
6 immediately forward a copy of such form to the office of the prosecuting
7 attorney or the city clerk of the municipality in which such prosecution is
8 pending when the prosecuting attorney is not ascertainable. Receipt of any
9 completed form indicating that insurance was not in effect on the date
10 specified shall be prima facie evidence of failure to provide proof of
11 financial security and violation of this section. A request that the matter be
12 set for trial shall be made immediately following the receipt by the
13 prosecuting attorney of a copy of the form from the department of revenue
14 indicating that insurance was not in force. Any charge of violating
15 subsection (b), (c) or (d) shall be dismissed if no request for a trial setting
16 has been made within 60 days of the date evidence of financial security
17 was produced in court.

18 (f) Any person in whose name more than 25 motor vehicles are
19 registered in Kansas may qualify as a self-insurer by obtaining a certificate
20 of self-insurance from the commissioner of insurance. The certificate of
21 self-insurance issued by the commissioner shall cover such owned vehicles
22 and those vehicles, registered in Kansas, leased to such person if the lease
23 agreement requires that motor vehicle liability insurance on the vehicles be
24 provided by the lessee. Upon application of any such person, the
25 commissioner of insurance may issue a certificate of self-insurance, if the
26 commissioner is satisfied that such person is possessed and will continue
27 to be possessed of ability to pay any liability imposed by law against such
28 person arising out of the ownership, operation, maintenance or use of any
29 motor vehicle described in this subsection. A self-insurer shall provide
30 liability coverage subject to the provisions of ~~subsection (e) of~~ K.S.A. 40-
31 3107(e), and amendments thereto, arising out of the ownership, operation,
32 maintenance or use of a self-insured motor vehicle in those instances
33 where the lessee or the rental driver, if not the lessee, does not have a
34 motor vehicle liability insurance policy or insurance coverage pursuant to
35 a motor vehicle liability insurance policy or certificate of insurance or such
36 insurance policy for such leased or rented vehicle. Such liability coverage
37 shall be provided to any person operating a self-insured motor vehicle with
38 the expressed or implied consent of the self-insurer.

39 Upon notice and a hearing in accordance with the provisions of the
40 Kansas administrative procedure act, the commissioner of insurance may
41 cancel a certificate of self-insurance upon reasonable grounds. Failure to
42 provide liability coverage or personal injury protection benefits required
43 by K.S.A. 40-3107 and 40-3109, and amendments thereto, or pay any

1 liability imposed by law arising out of the ownership, operation,
 2 maintenance or use of a motor vehicle registered in such self-insurer's
 3 name, or to otherwise comply with the requirements of this subsection
 4 shall constitute reasonable grounds for the cancellation of a certificate of
 5 self-insurance. Reasonable grounds shall not exist unless such
 6 objectionable activity occurs with such frequency as to indicate a general
 7 business practice.

8 Self-insureds shall investigate claims in a reasonably prompt manner,
 9 handle such claims in a reasonable manner based on available information
 10 and effectuate prompt, fair and equitable settlement of claims in which
 11 liability has become reasonably clear.

12 As used in this subsection, "liability imposed by law" means the stated
 13 limits of liability as provided under ~~subsection (e) of~~ K.S.A. 40-3107(e),
 14 and amendments thereto.

15 Nothing in this subsection shall preclude a self-insurer from pursuing
 16 all rights of subrogation against another person or persons.

17 (g) (1) Any person violating any provision of this section shall be
 18 guilty of a class B misdemeanor and shall be subject to a fine of not less
 19 than ~~\$300~~ \$1,000 nor more than ~~\$1,000~~ \$2,500 or confinement in the
 20 county jail for a term of not more than six months, or both such fine and
 21 confinement.

22 (2) Any person convicted of violating any provision of this section
 23 within three years of any such prior conviction shall be guilty of a class A
 24 misdemeanor and shall be subject to a fine of not less than ~~\$800~~ \$2,500
 25 nor more than ~~\$2,500~~ \$5,000.

26 (h) In addition to any other penalties provided by this act for failure
 27 to have or maintain financial security in effect, the director, upon receipt of
 28 a report required by K.S.A. 8-1607 or 8-1611, and amendments thereto, or
 29 a denial of such insurance by the insurance company listed on the form
 30 prescribed by the secretary of revenue pursuant to subsection (d) ~~of this~~
 31 ~~section~~, shall, upon notice and hearing as provided by K.S.A. 40-3118, and
 32 amendments thereto:

- 33 (1) Suspend:
 - 34 (A) The license of each driver in any manner involved in the
 - 35 accident;
 - 36 (B) the license of the owner of each motor vehicle involved in such
 - 37 accident, unless the vehicle was stolen at the time of the accident, proof of
 - 38 which must be established by the owner of the motor vehicle. Theft by a
 - 39 member of the vehicle owner's immediate family under the age of 18 years
 - 40 shall not constitute a stolen vehicle for the purposes of this section;
 - 41 (C) if the driver is a nonresident, the privilege of operating a motor
 - 42 vehicle within this state; or
 - 43 (D) if such owner is a nonresident, the privilege of such owner to

1 operate or permit the operation within this state of any motor vehicle
 2 owned by such owner; and
 3 (2) revoke the registration of all vehicles owned by the owner of each
 4 motor vehicle involved in such accident.
 5 (i) The suspension or revocation requirements in subsection (h) shall
 6 not apply:
 7 (1) To the driver or owner if the owner had in effect at the time of the
 8 accident an automobile liability policy as required by K.S.A. 40-3107, and
 9 amendments thereto, with respect to the vehicle involved in the accident;
 10 (2) to the driver, if not the owner of the vehicle involved in the
 11 accident, if there was in effect at the time of the accident an automobile
 12 liability policy with respect to such driver's driving of vehicles not owned
 13 by such driver;
 14 (3) to any self-insurer as defined by ~~subsection (u)~~ of K.S.A. 40-
 15 3103(u), and amendments thereto;
 16 (4) to the driver or owner of any vehicle involved in the accident
 17 which was exempt from the provisions of this act pursuant to K.S.A. 40-
 18 3105, and amendments thereto;
 19 (5) to the owner of a vehicle described in subsection (a)(2).
 20 (j) (1) For the purposes of ~~provisions (1) and (2) of subsection~~
 21 ~~subsections (i) of this section(1) and (2)~~, the director may require
 22 verification by an owner's or driver's insurance company or agent thereof
 23 that there was in effect at the time of the accident an automobile liability
 24 policy as required in this act.
 25 (2) Subject to the provisions of subsection (k), any suspension or
 26 revocation effected hereunder shall remain in effect until such person:
 27 (A) Has filed satisfactory proof of financial security with the director
 28 as required by ~~subsection (d)~~ of K.S.A. 40-3118(d), and amendments
 29 thereto;
 30 (B) has paid the reinstatement fee herein prescribed; and
 31 (C) (i) has been released from liability;
 32 (ii) is a party to an action to determine liability pursuant to which the
 33 court temporarily stays such suspension pending final disposition of such
 34 action;
 35 (iii) has entered into an agreement for the payment of damages; or
 36 (iv) has been finally adjudicated not to be liable in respect to such
 37 accident and evidence of any such fact has been filed with the director.
 38 (3) The reinstatement fee shall be \$100 except that if the registration
 39 of a motor vehicle of any owner is revoked within one year following a
 40 prior revocation of the registration of a motor vehicle of such owner under
 41 the provisions of this act such fee shall be \$300.
 42 (k) (1) Whenever any person whose license has been suspended or
 43 revoked pursuant to this section is involved in an accident and has entered

1 into an agreement with any driver, or such driver's insurer, who has been
2 damaged or whose vehicle has been damaged to pay for such damage and
3 such person defaults on payments under such agreement, the driver or the
4 driver's insurer, as appropriate, shall notify the director within 60 days of
5 the date of default.

6 (2) Upon receipt of the notice of default, the director shall
7 immediately suspend such person's license and registration. If such person
8 is a nonresident, the director shall immediately suspend such nonresident's
9 privilege to operate a motor vehicle in this state.

10 (3) Except as provided in paragraph (4), such person's driver's
11 license, registration and nonresident's operating privilege shall remain so
12 suspended and shall not be renewed, nor shall any such license or
13 registration be thereafter issued in the name of such person, including any
14 such person not previously licensed, unless and until:

15 (A) The director receives notice payments under the agreement
16 referred to in paragraph (1) have been resumed and that payments under
17 such agreement are no longer in default;

18 (B) such person has filed satisfactory proof of financial responsibility
19 with the director as required by ~~subsection (d)~~ of K.S.A. 40-3118(d), and
20 amendments thereto; and

21 (C) the reinstatement fee required by subsection (j) has been paid.

22 (4) Upon due notice to the director that the conditions of paragraph
23 (3) have been fulfilled, such person may obtain from the director an order
24 restoring such person's driver's license, registration and nonresident's
25 operating privilege to operate a motor vehicle in this state conditioned
26 upon such person's continued compliance with the agreement referred to in
27 paragraph (1).

28 (5) In the event such person fails to make any further payment under
29 the agreement referred to in paragraph (1) when such payment is due, the
30 director, upon receipt of notice of such default, shall immediately suspend
31 the license, registration or nonresident's operating privilege of such person
32 until all payments have been made under the agreement referred to in
33 paragraph (1). No suspension of such person's license, registration or
34 nonresident's privilege to operate a motor vehicle in this state shall be
35 reinstated pursuant to paragraph (4).

36 (l) The provisions of this section shall not apply to motor carriers of
37 property or passengers regulated by the corporation commission of the
38 state of Kansas.

39 (m) The provisions of subsection (d) shall not apply to vehicle
40 dealers, as defined in K.S.A. 8-2401, and amendments thereto, for vehicles
41 being offered for sale by such dealers.

42 (n) (1) *In addition to any other penalty under this section, if a person*
43 *is convicted of violating the provisions of this section within two years of a*

1 *prior conviction of violating the provisions of this section, the prosecuting*
2 *attorney may seek and the court may order the impoundment of such*
3 *person's motor vehicle until such person provides credible evidence that*
4 *such person has obtained a motor vehicle liability insurance policy that*
5 *satisfies the provisions of K.S.A. 40-3107, and amendments thereto. Once*
6 *such person provides credible evidence of a motor vehicle liability*
7 *insurance policy for the impounded vehicle, such person may retrieve the*
8 *impounded vehicle after having paid for the cost of towing, storage or any*
9 *other fees relating to the impoundment of such vehicle.*

10 (2) *If the uninsured motorist does not claim such uninsured motorist's*
11 *vehicle within 60 days, such vehicle shall be sold at auction to recover the*
12 *costs of towing, storage and any other fees relating to the impoundment of*
13 *such vehicle, and any proceeds obtained in excess of such fees shall be*
14 *distributed to such uninsured motorist, unless such vehicle was involved in*
15 *an accident and the fault of driver thereof is greater than that of the driver*
16 *of every other vehicle involved in the accident, then the proceeds from*
17 *such sale in excess of the such fees, if any, shall be distributed in equal*
18 *amounts to the driver of every other motor vehicle involved in the*
19 *accident.*

20 (3) *If the uninsured motorist was driving a stolen motor vehicle, then*
21 *the provisions of this subsection shall not apply to such motor vehicle or to*
22 *the true owner thereof.*

23 Sec. 2. K.S.A. 2018 Supp. 40-3104 is hereby repealed.

24 Sec. 3. This act shall take effect and be in force from and after its
25 publication in the statute book.